Thursday
20th May, 1954

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OFFICIAL REPORT

(Part II - Proceedings Other than Questions and Answers)

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LOK SABHA

Thursday, 20th May, 1954

The Lok Sabha met at a Quarter Past Eight of the Clock

[MR. DEPUTY-SPEAKER *in the Chair*]

QUESTIONS AND ANSWERS

[*No Questions: Part I not published*]

18-15 A.M.

PAPERS LAID ON THE TABLE

STATEMENT CORRECTING REPLY GIVEN TO A SUPPLEMENTARY QUESTION

The Parliamentary Secretary to the Minister of Production (Shri R. G. Dubey): I beg to lay on the Table a copy of the statement, correcting the reply given to a supplementary question on starred question No. 932 on the 11th March, 1954.

STATEMENT

Arising from Starred Question No. 932 in the Sabha on the 11th March 1954, a supplementary question was asked by a Member as to the total capacity of the refineries being set up in India. I stated the capacity of the three refineries, *viz.*, Burmah-Shell, Standard Vacuum and Caltex, to be 2 million gallons, 1·2 million gallons and 0·5 million gallons per year respectively. These figures are however in tons and not in gallons as stated by me.

COMMITTEE ON ABSENCE OF MEMBERS

PRESENTATION OF THIRD REPORT

Shri Altekar (North Satara): I beg to present the Third Report of the Committee on Absence of Members from sittings of the House.

SPECIAL MARRIAGE BILL—*Contd.*

Mr. Deputy-Speaker: The House will now proceed with the further consideration of the motion moved by the hon. Law Minister. Shri Somana was in possession of the House.

पंडित ठाकुर दास भार्गव (गुड़गांव) : जनाबवाला, चूंकि यह एक बहुत अहम बिल है जिस पर हम ग़ौर कर रहे हैं इसलिये इसके बारे में मैं एक चीज़ अर्ज़ करना चाहता हूं। मुझे इस पर बहस करने की ज़रूरत नहीं है कि यह बिल निहायत ही ज़रूरी है। मैं सारे हाउस की यह फीलिंग देखता हूं कि जो वक्त सके लिये दिया गया है वह काफी नहीं है। हर एक भी मेम्बर पन्द्रह मिनट के अन्दर तमहीद हो तमहीद खत्म करता है, इसके ऊपर इतने थोड़े वक्त में अपनी पूरी राय ज़ाहिर नहीं कर सकता। चूंकि बहुत सारे मेम्बर चाहते हैं कि वह इस पर बोलें इसलिये मैं अर्ज़ करना

[पंडित ठाकुर दास भार्गव]

चाहता हूं कि जनाबवाला ने जो यह फरमाया कि शायद कल दोपहर के बाद इसका कंसिडरेशन खत्म हो जाय उस पर जनाबवाला मेहरबानी करके दोबारा गौर करें। मेरी गुजारिश यह है कि आज और कल आप आफ्टरनून सेशन करें। (*some hon. members*: No, no.) उसके बाद काफी मेम्बरान ऐसे रह जायें जो कि नहीं बोल पाते तो इस बिल का कंसिडरेशन आइन्दा के वास्ते मुल्तवी किया जाय। (*some hon. members* yes, yes.) यह न किया जाय कि इस का कंसिडरेशन बन्द कर दिया जाय। मैं अदब से गुज़ारिश करूंगा कि आप इस पर रिव्यू करें।

Shri Venkataraman (Tanjore): May I just say a word on this? There are a large number of people who want to participate in the debate. In order to provide facilities for all the Members, it is necessary to restrict the time. We are going to have a clause by clause discussion. Whatever hon. Members want to urge, could be done more effectively in the clause by clause consideration. This is a general discussion. Therefore, I would suggest that the time limit that you fixed should be adhered to.

Shri Altekar (North Satara): No time limit should be fixed. In the clause by clause consideration, the discussion will be restricted to the particular clause only. We have now to take into consideration the comprehensive scheme as a whole. For this general discussion, longer time is necessary.

Shri Bogawat (Ahmednagar South): Opportunity should be given to all the Members to speak on this Bill. This is not an ordinary Bill. This is a Bill whereby the Government want to make changes in the social customs, etc.

सेठ गोविन्द दास (मंडला—जबलपुर—दक्षिण) : मैं यह निवेदन करना चाहता था कि इस प्रकार के जो सामाजिक विधेयक आते हैं उन पर अगर थोड़ा समय दिया जायेगा, और कम से कम इस विवादग्रस्त विषय पर तो इससे देश में बहुत असंतोष होगा और मैं नहीं समझता कि एक या दो दिन में इस पर बहस हो सकती है। इसलिये मेरा निवेदन है कि जब कल तक इस पर विचार हो जाय तो बाद में यह बिल आगे के सेशन के लिये मुल्तवी कर दिया जाय।

Shri Gidwani (Thana): I would join in the request that the consideration be postponed till the next session.

Mr. Deputy-Speaker: What has the Law Minister to say?

The Minister of Law and Minority Affairs (Shri Biswas): I am in your hands and in the hands of the House. If there is a general desire to discuss the Bill at great length, I cannot possibly stand in the way. Whether you have extra sittings in the afternoons this session or you adjourn the whole matter to the next session, it is entirely for you to decide.

Mr. Deputy-Speaker: It is only yesterday that it was decided that this discussion will go on during the rest of the session and that the clause by clause consideration will be taken up next session. Thus we have 12 hours and 45 minutes. It was also said that hon. Minister will have 45 minutes and other Members 15 minutes each, except the spokesmen of the groups who will have 20 minutes, and that the time would be distributed accordingly. A little more time was asked by some hon. Members, Shri Gadgil, etc., and I said, up to half an hour in special cases. I shall watch the debate and if the points have already been made by some other hon. Member, I shall ask the Member to cut short, and give opportunity to other Members. It is only yesterday that we took a decision and we agreed that the clause by

clause consideration may be postponed to the next session. However, there is a general desire on the part of the House to discuss for longer time. It is for the House to decide. I am sitting here whether you go through the clause by clause consideration or the consideration stage. The point is, should we take another decision today?

Regarding sittings in the afternoons, we have.....

Some Hon. Members: No afternoon sittings.

Mr. Deputy-Speaker: Nobody wants it. I shall leave it to the House. Before we disperse, hon. Members should make up their minds. The hon. Minister has no objection. Shri Venkataraman says that we have agreed yesterday. There are two sections of opinion in this House. I will ask again before we disperse today what the general desire of the House is and then see what decision should be taken.

Shri Tek Chand (Ambala-Simla): May I, with your permission, suggest, Sir, that at least those who have written detailed minutes of dissent and expressed their views should be given more than 15 minutes.

Pandit Thakur Das Bhargava: On this point, may I submit that those who have not been able to express their views anywhere on this Bill should be given much more time than those who have been in the Select Committee.

Shri Bogawat: Those who have not been on the Select Committee should have greater time.

Mr. Deputy-Speaker: I do not find any minutes of dissent here. It may be in the Select Committee report. Has it been distributed to all hon. Members?

Shri V. G. Deshpande (Guna): Not to all; some Members have got it.

Mr. Deputy-Speaker: The discussion will proceed. I shall first call hon. Members who have not spoken at all till now. It will be their day today. Tomorrow, I will call upon hon. Members who speak from their party's point of view; spokesmen of groups and others who may be interested. There will be no such restriction. I will call others if there is time. Today, only those hon. Members who have not participated so far will speak. Before I call any hon. Member, Shri Somana will continue.

Shri M. S. Gurupadaswamy (Mysore): May we know whether only Members who have not spoken at all till now will be called or those who have not participated in this Bill?

Mr. Deputy-Speaker: Hon. Members who have had no opportunity to speak at all from the commencement of the session will be given preference. They will make maiden speeches, man or woman. Then, those who have not participated in any Marriage, Divorce or Special Marriage Bill; then those hon. Members whose opinions are necessary to be taken as reflecting their view points or the view point of their parties or groups. The hon. Members should decide for themselves. I do not have a list here. Excepting Shri Somana, whoever stands up ought not to have spoken at all during this session. I will exhaust that list first before coming to others.

The Minister of Defence Organisation (Shri Tyagi): Or perhaps you might like to hear Members according to age groups so that one could know what views the outgoing and the coming generations had.

Mr. Deputy-Speaker: I am afraid the hon. Minister has crossed that age group.

Dr. Jaisoorya (Medak): May I know from you, Sir, whether, if this debate is inconclusive at the end of the session, it will be continued in the next session?

Some Hon. Members: Yes.

Mr. Deputy-Speaker: The House will take a decision this afternoon before we disperse today. Shri Somana.

Shri D. C. Sharma (Hoshiarpur): Maiden speeches will be delivered today and post-maiden speeches will be delivered tomorrow.

Mr. Deputy-Speaker: I am not able to follow. I accept whatever Mr. Sharma says.

Sardar A. S. Saigal (Bilaspur): He has already spoken.

Shri N. Somana (Coorg): Yesterday I was dealing with clauses 25 and 26, and I was submitting that clause 26 has been wrongly worded and I gave my reasons for it.

Mr. Deputy-Speaker: Order, order. Hon. Members must hear those hon. Members who have not spoken for a long time. They will have much to give to us, the essence of all that they have not spoken so far.

Shri N. Somana: So far as clause 25 is concerned, in the case of voidable marriages, there seems to be a lacuna. What will happen to the children of those whose marriage is declared to be annulled under clause 25? I feel that this lacuna has to be removed and a clause put in whereby provision is made giving legitimacy to certain children in certain cases under clause 25.

I now come to the other provision which deals with registration of marriages celebrated in other cases. This is only an enabling provision to enable persons who have already undergone the ceremony of marriage and who desire to avail of the advantages provided under this section, *viz.*, the question of bigamy, succession under the Succession Act and so on. So, I should think that this clause will remain as it is.

Now, some objection was taken to clause 15(e) which states that even in the case of prohibited degrees of marriage, if the marriage has been performed under any law or custom or usage having the force of law, such persons who were married under such customs could get themselves registered. There again, the same argument applies, and my submission is that this provision should be there, because otherwise it will be barring such persons who have gone through marriage under customary law from taking advantage of the provisions of this Act. After all, it is everybody's view that this is a broad-based legislation and the hon. Law Minister has termed this law rightly to be a territorial law, and in this case I should think it must be as broad-based as possible. Therefore, I am of opinion that sub-clause (e) of clause 15 must be retained as it is without any alteration, although in the case of registration of marriages in the first instance, the prohibited degrees will still apply.

Then, so far as divorce is concerned, there is only one question on which there is so much divergence of opinion, and that is whether divorce should be allowed by mutual consent. That is a new clause that has been added by the Council of States. It is sub-clause (k) of clause 27 which reads:

> "has lived apart from the petitioner for one year or more or the parties refuse to live together and have mutually consented to dissolve the marriage;"

I am one of those who hold that this provision should not be there. I feel that divorce is a new inroad into the system of marriages in our country, especially the major portion of the country, *viz.*, the Hindus. When for the first time we are introducing a law of this kind, I think it is better to halt at a certain stage and proceed slowly. I do not believe we can go through a marriage today and get apart tomorrow. I do not believe that marriages registered under this law should be considered in the nature of railway friends who travel for a day

or two and then part. This will also lead to the other fact that people may get into a sort of agreement that they would marry and live together for some time and then separate. It will be a sort of experimental marriage. My submission is the very idea is against the system of marriage obtaining in our country, and this clause ought not to be inserted. I hope the hon. Members of this House will agree with me that it is not proper to have this clause here and it should be omitted.

Generally on other matters I am glad that the report of the Select Committee has been acceptable to the House. With the exception of a few points I am sure that the Bill as it has emerged from the Select Committee has been approved by a large section of the House, and I hope this law which is, of course, much above caste and community and the purpose of which is to unify the code of law for marriages, will be hailed in this country as a good augury. I submit this measure has to be passed without much discussion, because on major points there is general agreement and there is divergence of views only on a few points. I appeal to hon. Members not to delay this measure. Whatever happens to the Hindu Marriage and Divorce Bill I feel this measure must be approved by this House as early as possible, so that people who want to take advantage of it can do so as early as possible. I hope therefore that this Bill with the few alterations which I have suggested will be acceptable to the House.

Mr. Deputy-Speaker: Mr. Dabhi.

Shri Dabhi (Kaira North): Mr. Deputy-Speaker . . .

Shri Velayudhan (Quilon *cum* Mavelikkara—Reserved—Sch. Castes): I have seen him speaking several times here.

Mr. Deputy-Speaker: Has he spoken already on this question.

Shri Dabhi: On one cut motion on Railways I spoke. I have not spoken on any Marriage Bill upto this time.

Mr. Deputy-Speaker: I will call him tomorrow. Shri Khusi Ram Sharma.

Shri Lakshmayya (Anantapur): On a point of information, is it that those who have not taken part during this session who will be allowed to speak or those who have not spoken on this Bill? That has to be clarified.

Mr. Deputy-Speaker: I have got the names of five hon. Members who have not spoken at all. That is what they have written to me. As soon as I exhaust them, I will call those who have not spoken on any of these Marriage Bills. Then, I will come to the others who have spoken on Marriage Bills; they are the experts and specialists.

श्री के० आर० शर्मा (जिला मेरठ पश्चिम) : उपाध्यक्ष महोदय, मैं इस बिल का स्वागत करता हूं लेकिन इसके सम्बन्ध में मुझे यह कहना है कि जिन लोगों को किसी विशेष परिस्थिति के अनुसार उन परम्पराओं से हट कर, जोकि बहुत पुराने जमाने से हमारे देश में चली आती हैं, विवाह करने की आवश्यकता हो उन्हीं के लिये इसमें प्रावीजन होना चाहिये । हमारी जो पुरानी परम्परायें हैं उन पर कम से कम आघात होना चाहिये । इस बिल के सम्बन्ध में और जो पहले हिन्दू मैरिज एंड डाइवोर्स बिल इस सदन में पेश हुआ था उसके सम्बन्ध में एक महिला सदस्या ने यह कहा था कि चुनाव के समय स्त्रियों ने हमको इसी आधार पर राय दी थी कि ये बिल जल्दी से जल्दी यहां पर पेश हो और पास हो जायें । मैं इस मत का नहीं हूं । मैं यह बतला देना चाहता हूं कि जब चुनाव के समय हम जनता के सामने गये तो वहां बार बार हमारे सामने यही प्रश्न आया कि हिन्दू कोड बिल, जिसको जनता चाहती नहीं, उसको कांग्रेस जनता के ऊपर थोपना चाहती है । हमने उन से यही

[श्री के० आर० शर्मा]

कहा कि हिन्दू कोड बिल जिस रूप में पहले पार्लियामेंट में आ रहा था उस रूप में पार्लियामेंट में नहीं आयेगा बल्कि उसकी जो जो बातें जनता को पसन्द नहीं हैं वे उसमें से निकाल कर बिल सदन में पेश किये जायेंगे। और जिन जिन हिस्सों को जनता पसन्द नहीं करती वे जनता के ऊपर थोपे नहीं जायेंगे।

यह कह कर हमने इलेक्शन में भाग लिया था और इस बात को अच्छी तरह से समझते हुये जनता ने हमको राय दी थी। यह कहना गलत है कि उन सारी चीज़ों को मानते हुये जो कि हिन्दू कोड बिल में रखी गई थीं जनता ने हमको राय दी थी। कुछ स्त्रियां बड़े ज़ोर से इस कोशिश में थीं कि यह दोनों बिल जल्दी से जल्दी इस सदन में आयें। मैं नहीं समझता कि क्या बड़ी भारी जल्दी उनको थी और क्या परेशानियां और ज्यादा पैदा होती जा रही थीं जिनसे कि इन पर और अधिक अच्छी तरह से सोच विचार करके ये बिल पेश नहीं किये जा सकते थे ताकि जो खराबियां उन में रह गई हैं, वह हम दूर कर सकते और मैं नहीं समझता कि अगर खूब इन पर सोच विचार और मनन कर के इन को सदन के सामने पेश किया जाता तो क्या परेशानी की बात होती? मेरा ख्याल यह है कि जिन स्त्रियों ने इतनी जल्दी इन बिलों के सम्बन्ध में की है वह हमारे भारत के स्त्रीत्व का प्रतिनिधित्व नहीं करतीं और वह हमारे ख्याल से भारतीय नारीत्व पर पश्चिमी कलम है और जैसे कि आम होता है कलमी और तुखमी, उसी प्रकार से वे भारतीय नारीत्व पर पश्चिमी कलम के समान चढ़ी हुई हैं, और मेरा ख्याल है कि भारतीय नारी का वह पूरे तौर से प्रतिनिधित्व नहीं करतीं। यह मैं मानता हूं कि जनता की वैसी हीप्र तिनिधि वह भी हैं जैसे कि हम हैं, लेकिन भारतीय नारीत्व का वह प्रतिनिधित्व नहीं करतीं, केवल उनकी बात इन बिलों के सम्बन्ध में मान ली जाय, इस बात को मैं नहीं मानता, मेरा ख्याल यह है कि हमको बहुत सोच समझ कर इन बिलों के सम्बन्ध में चलना चाहिये और जो कोई भी चीजें इन में एसी हों जिनको कि जनता पसन्द नहीं करती, उनको जनता के ऊपर हमें जबरदस्ती थोपना नहीं चाहिये। मेरा ख्याल यह है कि विशेष परिस्थिति में जिन लोगों को अपनी परम्पराओं को छोड़ कर विवाह करने की आवश्यकता पड़ गई है, केवल उनको इस बात की इजाजत दे देनी चाहिये लेकिन जो पुरानी परम्परा के अनुसार चलना चाहते हैं उनको उसी तरह से चलने देना चाहये। इसलिये मेरा यह ख्याल है कि इस बिल में जो इस बात की इजाजत दी गई है कि जिन लोगों ने पुराने हिन्दू या मुस्लिम तरीकों के अनुसार अपने विवाह किये हों, उनको भी इस कानून के अनुसार अपने विवाह रजिस्टर कराने की इजाजत दे दी जाय, यह प्रावीज़न इसमें से निकाल देना चाहिये।

इसके अलावा डाइवोर्स, तलाक के सम्बन्ध में और दूसरे जो प्राविजन्स हैं उन के सम्बन्ध में मुझे यह कहना है कि जो लोग चाहें उनको मौका तो देना चाहिये और पूरी तौर से उनको इस कानून के मातहत शादी करने और तलाक की सहूलियत होनी चाहिये, लेकिन किसी सूरत में भी लोगों को अपनी परम्पराओं को छोड़ने के लिये प्रोत्साहन नहीं देना चाहिये। जहां तक यह कहा जाता है कि पुरानी परम्पराओं में डाइवोर्स है, मैं मानता हूं कि डाइवोर्स वहां पर है और हमारे यहां समय समय पर ला गिवर्स ने रास्ता भी दिखाया है और कहा है:

श्रुतिर्विभिन्ना स्मृतयो विभिन्नाः
नैको मुनिर्यस्य मतः प्रमाणम्
धर्मस्य तत्वं निहितं गुहायाम्
महाजनो येन गतः स पन्था।

श्रुति भी भिन्न भिन्न हैं और स्मृति में भी भिन्न मत प्रकट किये गये हैं। इसमें कहा गया है कि बड़े आदमी जिस रास्ते पर चलते हों, उसी रास्ते पर लोगों को चलना चाहिये। तो मैं कहता हूं कि यदि टंडन जी और श्री एम० अनन्तशयनम् आय्यंगर डाइवोर्स करने लगें या हमारी उमा नेहरू जी और श्रीमती जयश्री डाइवोर्स करने लगें तो दूसरे लोग भी उनके पीछे चलें और डाइवोर्स करें। यह सीधा तरीका हमारे यहां दिखाया गया है और इसके रहते मैं नहीं समझता कि इस डाइवोर्स के प्राविज़न रखने की क्या ज़रूरत है? मेरा तो मत यह है कि बेशक जिन लोगों की विशेष परिस्थिति हो, उनको इस कानून में प्राविज़न करके उसके लिये मौका दिया जाय लेकिन पुरानी परम्परा से हटने के लिये लोगों को प्रोत्साहन न दिया जाय, यह बात कहते हुये मैं इस बिल का समर्थन करता हूं।

Mr. Deputy-Speaker: Now, Shri Achuthan.

Shri Achuthan (Cranganur) *rose*—

Some Hon. Members: He has already spoken.

Shri Achuthan: No. Not during this session.

Mr. Deputy-Speaker: I am calling hon. Members who have not spoken at all during this session.

The Prime Minister and Leader of the House (Shri Jawaharlal Nehru): Is it your decision that if I wish to speak, I cannot speak? May I beg of you to reconsider that decision, and allow people who know about this subject to speak, irrespective of the fact that they have spoken ten times or not at all?

Mr. Deputy-Speaker: I have said that today, I shall give opportunities to those hon. Members who have not spoken at all in this House so far. I shall call the other hon. Members tomorrow. That is what I said. If the hon. Prime Minister wants to speak, there is no rule at all, so far as he is concerned. He can come and speak any time. But in any particular case, it is given to me to call hon. Members. I have already stated that I shall certainly give an opportunity to leaders or spokesmen of groups or other persons who can speak specially on this. I do not want any kind of remark to be made that I have not called anybody. This is a Bill on which attention must be focussed, and all viewpoints must be placed before the House from all quarters. I am not going to shut out any discussion on this.

Shri Jawaharlal Nehru: If Members who have not spoken only could speak, then necessarily, the leaders of parties who have repeatedly spoken cannot speak.

Mr. Deputy-Speaker: I am reserving tomorrow for all leaders of parties. I am entirely in the hands of the House. I do not know if the hon. Leader of the House has received such letters as have been addressed to me. They say, you say, yes, but does your 'yes' mean no; then, they come to me again and again, saying, have you ignored me; we are eighty people from the Uttar Pradesh, have you distributed the time properly for us; we are women, have you ignored us; we are old people, have you ignored us; have you no eyes to see, shall we have an electric light there, etc. This is the unfortunate kind of letters I have been receiving, and I shall place all these letters before the hon. Prime Minister.

I have repeatedly requested all groups in this House to give me lists of Members who want to speak. I have already told them that I have divided the time between the Congress group and the other groups in the proportion of sixty to forty. I have requested the leaders of all groups to give me chits with the

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names of Members, confining themselves to the time which is allotted to their share. If I am not getting that help which I am entitled to get from every one of the groups here, I am really at sea, and I do not know what to do. I am getting all sorts of letters. Fifty-five Members from the back-benches wrote to me, that they have not been able to catch my eye, that I have become blind, and that they have not even been able to catch my ear. This is the unfortunate position in which I am.

Therefore, I shall try to see that all viewpoints are allowed an opportunity. If, on the other hand, the view of the House is that these other people need not be given an opportunity, so far as this Bill is concerned, I shall adopt that policy. I am trying to distribute the time....

Shri M. S. Gurupadaswamy: May I make one submission? You were pleased to say that you have allotted a certain time to each group. But we are seeing now that no time-limit is observed, so far as this group is concerned, while some groups are not at all called on very important occasions. So, may I request you to see that hereafter, all groups are adequately given chance to speak?

Pandit Thakur Das Bhargava: May I submit that in social matters, and non-party matters, there is no question of this group or that group getting a particular time allotment? We are all entitled to the time of the House.

Shri M. S. Gurupadaswamy: But why should any group be left out on that account?

Mr. Deputy-Speaker: No group has been left out at all. That is a very improper charge. I have given opportunity to the hon. Members of his group. Everyone of them will lay his hand on his heart and see that he has spoken several times. All groups have been represented.

I shall regulate the debate, so that the debate might be raised to a high level. I said that, today, I shall give opportunities to those hon. Members who have not spoken at all so far, before the present session concludes, lest it should be said when they go back to their constituency that they have not opened their mouths at all. I shall give opportunities to all the leaders of the groups tomorrow. If, however, any leader wants to speak today, I have no objection.

Shri Achuthan: According to me, during the current session of Parliament, this Bill is the most important Bill, so far as India is concerned. The hon. Law Minister has explained the genesis of this Bill. It has been in the country for more than half a century, or I would say, for even nearly a century. We want a society in this country, which is not enamoured of the orthodox views of any religion. I feel that we must have a change in our outlook, in the day to day affairs of our lives.

Religion has its place. But people are progressive and there is no limit for thinking. So that some 5,000 years or 2,500 years or 1,000 years ago people were thinking and there was no end to thinking, and the only unchangeable thing is change. According to me, this is an important measure which has got a very laudable object in view. My point is that even religious heads must assemble together as nations assemble together and find out a solution whereby people of various faiths orthodox or unorthodox people,—can coherently live in a family as father or mother, husband or wife, son or daughter. Then only the problems that are confronting this world can be viewed correctly; if only we think rationally and correctly, all those problems will disappear from the face of the earth.

So we owe a deep debt of gratitude to our Law Minister who has taken up—courage to pilot such a Bill and throw some light to foreign people

that this country is not at all so much pestered with religious dogmas, other superstitious beliefs and so forth. Our Prime Minister has said that there should be a peaceful climate. According to me, this will create a very constructive climate for all sections, communities and religions to come together and live as good human beings. What did Lord Buddha say 2,500 years ago? This country, had not such a son with rational views ever since Buddha's Nirvana. He said —do not think too much of religion. Try to live a good life, a pure and simple good life. That is the stepping-stone for glory. We are the descendants of such a great man who lived and it is such a legacy which we are ignoring day by day. We have the Panchaseela and Ashtamarga. Who in the world can contradict them? Can any thinking man in the world contradict them? These were the messages which were given to us 2,500 years ago. Even now in this House we representatives of the people, say that this is not a laudable measure. I think it is to be pitied. In many parts of this country especially in the South—I do not know much about the North—there were great thinking men who thought about this problem and said that there should be no barrier on the ground of religion, or caste or community because all are human beings and there cannot be any barrier in the way of inter-religious or inter-caste marriages. I belong to one community, Thiyas, in Kerala. It has had the good fortune of having a great *guru*, Shri Narayana Gurudev. About 65 or 70 years ago, he proclaimed to the whole of that particular area that religion or caste cannot be a ground under any circumstances. He challenged them. He went on even installing idols and temples saying 'This is Shiva' or 'This is Vishnu'; 'It is not a Brahmin Shiva or a Brahmin Vishnu; it is a Chandala Shiva or a Chandala Vishnu'. He was such a rationalistic person and we are his descendants and we have studied the matter. So there is nothing perplexing to us in this Bill. I do not know how far it will be accepted by people, but one thing I can say, that our present-day college boys and girls will gladly welcome this Bill. According to me, it is a good omen that people discard, cast away, prejudices, their particular idiosyncracies and their particular mode of life. They should have a long-range view of the life of human beings throughout the world. I very heartily congratulate the Select Committee, the Law Ministry and the representatives of both Houses in welcoming and supporting this measure.

A lot has been said about the provisions of this Bill. Mainly as the Law Minister explained, this is a measure to welcome people not to stick upon religion for marriages, not to stick up to the theory that it must be always one marriage and there cannot be any divorce even in extreme cases. Most members may be aware that hanging and wiving go by destiny; that is a saying which everybody knows. I do think many people will say that there may not be occasion for divorce even though there may be ins and outs, likes and dislikes. But as soon as we decide, we must take up the point that even though there may be dislikes, there may be hatreds, there may be family troubles, we want a better society and good living. I lay stress only on good living. Let it be not on the basis of caste or religion. Moreover, in this House I have heard statements that Hindu religion will be in danger. Can you say in the present Hindu community what percentage of people observe this so-called Hindu law? From the early times, the Brahmins had the monopoly. I do not find fault with them. They thought at that time that their purity must be maintained. That was a natural phenomenon and a natural truth also. At that time the Brahmins wanted that they should have their pristine purity maintained and the other sections of the so-called Hindu community were to serve them—one class called, Kshatrivas, one class called Vaishvas and one called Shudras.

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They think in that particular way, they have that particular feeling that because it is an inroad upon the so-called Brahmin system, Brahminism will be in danger. We do not mind it. We want all people to take advantage of the quintessence of all good thought in the world, not only Hinduism. Good practices, good dogmas of all religions are our common property. We have to think in that light. If we want our progeny also to think in that light, we have to build up a society which is casteless and creedless. When we have taken such a long-range view, about the future, it must be a future which cannot have any barrier not only with regard to religion but with regard to nations. That is my view. Then only we can have some peace, contentment, progress and life worth living.

So that this is an important measure. For the time being, I can understand the reasoning for making it only a permissive measure. According to me, the age-limit fixed here is correct. I agree with that viewpoint. The girl and the boy must have sufficient maturity, sufficient age growth to understand the consequences by which they will be tied when they marry under this special law. So there is no necessity, no special ground. no coherent ground for saying that it must be reduced to 18. Moreover, according to me, early marriage means early responsibilities. There might be a sexual feeling, passions will be there and all that. We must try to restrain them. According to me, youngsters cannot think of marriage before 25 or 22. It is not a simple matter. It is a serious thing so that the age-limit must be at least 21. There cannot be any reduction either in the case of the boy or in the case of the girl.

Then with regard to the formalities to be gone into, I entirely agree. If there are any serious objections they must be considered. Under section 4, there are certain conditions prescribed. Those conditions must be scrupulously observed and if any man has got any serious objection, that must be heard and disposed of as shortly as possible.

Then I come to procedure and registration. I do not think there is much reasoning, much strength, behind section 15. Some section or people may have their own prejudices. We must tolerate that. They may have married under their custom or under their ceremonies or particular forms of marriage. Why should we allow them to come under this law? I do not know. There cannot be many people who will welcome such marriages coming under the provisions of section 15. But I must tell the House one thing. There may be a number of systems of marriages admitted by custom which may not have legal validity as far as their progeny is concerned. There must be a provision that no children on earth can be penalised by the fact that their parents have undergone a particular form of marriage, which may not be the legal system of marriage, but which is a system of marriage recognised by custom. An innocent child is the child of God. So that no child in any part of our country can have that stigma that his parents have not been married under the proper system, so that they have got a stigma or inferiority complex.

The more important matter with regard to this Bill is divorce. I agree with the Deputy-Speaker and others that divorce cannot be a common occurrence. We have our own experience in the area from which I come. In our particular area, formerly, divorce was a daily occurrence, just like casting off our dirty clothes. Even people who had four or five children divorced their wives and had another marriage. But now, we have introduced certain special laws for certain communities, and we have taken statistics, and from that we have understood that the percentage of divorce has come down from cent. per cent. to ten per cent. The social

sanction is there. It is not just like casting off something from our body. 90 per cent. have come under our special law and we have given consent for some people putting a petition by either party and getting a divorce. No court can enquire about the reasons for the divorce. That law was there and we carried on successfully. We found that divorce was not favoured. The Deputy-Speaker pointed out the aspects of divorce and there was truth in it. I appreciate that. Society will go to dogs if day-to-day divorce takes place. There is a social sanction in social boycott, social indignity,—all these things are behind the so-called measure, so that we cannot expect all thinking men of society, people who have some respect —even though they may not be rich or educated—some decent men, to go in for divorce. After some years, the so-called separateness or distinctiveness will disappear. At first, they may be husband and wife. Then they become father and mother. It will take them closer. Firstly, that feeling that he was once disliked, or she was once disliked will disappear. That is our experience. We know that. If we search our minds, these things will disappear. There will not be any catastrophe. We have got that thinking about good, decent life, which is enshrined in our country for thousands of years. We have not much to be afraid of this thing. Let us see how the provisions of this Bill work, and if we find amendments are necessary, we are here to look into the matter, to reflect the opinion of the community in the country and we will see that regular modifications are made under this Act. I hope that a good era will dawn in this country in which these feelings, the feelings of catastrophe, and those animosities will disappear and friendly feelings will take their place and all people will hail as one caste, one religion and one God for man.

9 A.M.

Shri C. R. Chowdary (Narasaraopet): I welcome this measure for the simple reason that it is a radical legislation that has been sought to be introduced for the first time on the Statute Book. This measure provides inter-caste, inter-religious marriages. It gives some sort of benefits to those people who marry under this Act, though they profess different faiths. From this aspect, a right that was not there, an opportunity that was denied for a long time since, has been provided. This measure, if properly enforced and availed of, will achieve the object of forging the unity in the nation. It removes the barrier that has come hitherto in the way of marriages of this kind between citizen and citizen. These provisions will bring about national solidarity. We know that religion, though it might have been of some service to progressive mankind at one time, is now recognised as a barrier in the further progress of mankind. As such, to remove this barrier and to forge national unity, this Bill is of immense service to the nation. The religious history discloses that our nation is divided into exclusive groups. Then, in any one religion, we have got also sub-sects. One sub-sect, under the present law, cannot contract a valid marriage with people belonging to other sub-sects.

Mr. Deputy-Speaker: It is not so. An Act has been passed in 1948, permitting inter-caste and sub-caste marriages.

Shri C. R. Chowdary: True, Sir, but though these inter-caste marriages have been permitted previously under the provisions of other Acts, they are made applicable for Hindu sub-caste marriages, they are not being encouraged. People are not encouraged to resort to inter-caste marriages. What I mean to say is, because of the existence of caste, community, and religion, in the social structure it acts as a barrier in the way of forging unity and it should be removed at the earliest possible moment. The provision of this Bill enables a marriage between people who profess different religious

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faiths, which serves the purpose of forging unity. That is the point I want to make out. This Bill not only makes a mere provision for inter-caste marriages between citizen and citizen in India, but also goes a step further and provides that a marriage that may be contracted between citizens of India abroad also will be validated. Provision is also being made, permitting persons who are already married under other forms of marriage to register their marriages and seek the benefits conferred under the provisions of this Act. This Bill is being opposed by some, who are conservatives and orthodox on various grounds. They need not oppose the provisions of this Bill which are meant for the welfare of the State. The cry that religion is in danger will not be an argument that can be accepted by anyone, for the simple reason that this legislation is only a permissive legislation and those people who want to avail themselves of the benefits conferred by this Act can avail themselves of the provisions and register their marriages, whether the marriage is contracted either after or before the passing of the Act which is solemnized under other forms of marriage. The present opinion of the society tends towards contractual marriages. As such, nowadays, the national Government and society in general have to take stock of facts and frame legislation accordingly. It is no good saying that if marriage is contracted under the provisions of this Act, religion will be in danger or the religious systems and the general social structure that are prevailing in the country will be in danger. After all, everybody realises as a recognised fact, that the nation wants a radical social reform. The need is to evolve a civil code applicable to all citizens living in the country instead of having various systems of law in the matter of marriage. For instance, we have got the Muslim law of marriage, the Hindu law of marriage, the Christian law of marriage and so on. All these are nothing but an indication of the disunity of the nation and this shall not be permitted to remain there for a long time. The only way to put an end to all these systems of marriages of citizens of a country is by evolving a common civil code applicable to all citizens irrespective of the religion, creed, caste or community. Therefore, as a first attempt to place on the statute-book the common provisions applicable in the matter of marriage of all citizens by having a permissive measure of this nature is welcome.

Coming to the various provisions of the Bill that have been passed by the Council of States, I point out that clause 4 is not exhaustive. The scope of clause 4 is limited in its extent for the simple reason that it does not permit a marriage which is recognised as permissible under custom and usage it falls within prohibited degrees. In the South, from which part I come, marriages within prohibited degrees are permissible by custom and usage. Such parties, if they want to have the marriages registered directly under the provisions of this Act, are not entitled to solemnize them under the provisions of this Act. But, there is a possibility that such marriages which are sanctioned by custom or usage can be solemnized—if both of them are Hindus—under the Hindu Marriage and Divorce Bill that is going to be enacted. If marriages solemnized according to the provisions of that Act are to be registered thereafter, the provision of clause 15 of this Bill permits that. Therefore, there is no meaning in limiting the scope of this Bill in clause 4—the marriage between persons where usage and custom permits but which falls within the prohibited degrees as defined herein. When once you recognise that marriages within prohibited degrees are permissible under custom or usage, under some other law, they should also be permitted to be registered direct under the provisions of this Bill.

Then, with regard to age-limit. We have got various age-limits for

various purposes. Under the criminal law, the age-limit is 16. When the hon. Member, Pandit Thakur Das Bhargava wanted to raise the age-limit, the Congress Party voted it down in the matter of the offence of rape. Now, the Majority Act provides the age-limit of 18. The Hindu Marriage and Divorce Bill provides for different age-limits, for the males and the females. Under this Bill, as passed by the Council of States, after a stormy debate, the age-limit has been fixed at 21 years for both the parties. I fail to understand why a different age-limit from that of the limit fixed in the Majority Act should be provided for. When the Majority Act provides that on the completion of eighteen years of age, a person is supposed to have discretionary maturity and qualified to deal with civil matters, then why should that be changed with regard to marriages? Either a male or a female, on the attainment of the age of eighteen, is supposed to have a mature understanding and she is in a position to enter into any contractual relationship either in the matter of property or social relationship. Therefore, the age-limit of 21 years is not a desirable thing. I think people below 21 years that is to say at the age of 18 years should be able to solemnize or have the registration of marriages under the provisions of this Act. That way, we will be enlarging the scope of the Act.

With regard to the provisions in the Bill about void and voidable marriages. In the case of a void marriage which was solemnized under the provisions of this Bill, clause 24(1) (ii) says that if the respondent was impotent at the time of the marriage and at the time of the institution of the suit, the marriage shall be declared a nullity. But, at the same time, if you read clause 26, it says that children born of such a marriage shall be declared legitimate. I fail to understand how an impotent fellow at the time of marriage is competent to beget a child. How can the child born before the date of the decree of nullity be declared a legitimate child of those parents, one of whom is impotent? It is against commonsense. It is an absurd clause. If the respondent was impotent at the time of the marriage and at the date of the decree, the court can declare that the child is legitimate but the public will refute it and there is a stigma attached to the boy or girl to say that his or her father, a respondent, was declared at the time of the marriage to have been an impotent person. How can an impotent man have a child? The child must have been born to somebody else and not to the impotent fellow. Therefore, to say by a decree or to ask the court to declare that so and so is the legitimate son or daughter of an impotent fellow is an absurdity. This is suggestive of the Female is unchaste. Therefore, this has to be reconsidered.

In the matter of divorce, there is a clause, clause (k), which has been introduced by the Council of States. This deals with mutual divorce. When the parties agree to a divorce, they shall be granted divorce. It is a sane clause, for the simple reason that if the parties to the marriage are experiencing that it is impossible to live under one roof, it is impossible for them to associate themselves with each other for social life, why should anybody come in the way of their separation? They should be granted the decree for divorce and they should be free to live separately and they shall also be free to re-marry or to remain single. Therefore, there is nothing wrong if the parties to a marriage agree to mutually separate and have their marriage nullified. Of course, due provision shall be made for the children. It appeals to commonsense of everyone and one shall not oppose it. Then about the period of re-marriage, this can take place only after the lapse of at least one year. One year is too long a period, because the trial court will take some time before giving its decree of divorce, and then the appellate court also will take some time,

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as such by the time the proceedings terminate, it will already be 1½ or 2 years, and then why should this one year period be inflicted after that for the re-marriage? The English law provides only six months' period between the decree *nisi* and the decree absolute. In my opinion, six months' time is a reasonable time for purpose of re-marriage.

In sub-clause (3) of clause 36, a vague word "unchastity" is mentioned as a ground for the district court to rescind the decree of Alimony. It being satisfied that the wife in whose favour an order has been made under this section has remarried or is not leading a chaste life, and then it shall rescind the order. I can understand a decree being rescinded for alimony and maintenance in the case of re-marriage, but I cannot understand why unchastity a vague term has been made a ground for purposes of rescinding the order for maintenance. Anybody can very easily impute unchastity to a female. A female seen talking to a male is understood by the orthodox people as something tantamount to mischief. Sir, it is a matter of opinion, but by mere talk nothing will happen, and according to this section it may be a ground to drag the wife to the court and ask for rescinding the decree for maintenance. Everybody knows that an allegation of unchastity is very easy to make, but it is very difficult to prove it. Nonetheless, this is a very vague word, I mean unchastity, and it will lead to vexatious litigation and give trouble to the wife who is living separate either at the instance of the husband or at her own instance or on grounds conceded in favour of both for the purpose of separate living. I suggest, therefore, that this vague term should be deleted and specification of concubination or prostitution be made so that it may not lead to vexatious litigation on vague grounds.

Mr. Deputy-Speaker: When we come to the consideration of the clauses, the hon. Member will get a further opportunity of speaking on the clauses. Now, I call upon Shri S. N. Das.

Shri S. N. Das (Darbhanga Central): I have not spoken on any Bill so far, but I have participated in the general discussion (*Interruption*).

Mr. Deputy-Speaker: Hon. Members will themselves take care to see that I do not increase the number of persons to speak on the Bill. Let me exhaust this list and now I call upon Mr. Nathwani to speak.

Shri N. P. Nathwani (Sorath): I rise to make a few observations on some of the important aspects of the Bill. It it no doubt a very important Bill, not that in actual operation it will affect the lives of many people. But it is important in view of the fact that it seeks to evolve a uniform civil code for the entire country. It is expected gradually to replace the present separate systems of law which govern the different communities in the country.

In this connection, it must be remembered what is provided in article 44 of our Constitution. It is this, that the State shall endeavour to secure for its citizens a uniform civil code for the entire territory. The underlying object is to secure a uniformity in the way of life of the people so that ultimately it will make for the solidarity and unity of the country; and in analysing and examining the provisions of the Bill, we must bear in mind the idea whether it seeks to evolve a common legislative measure on matters of marriage and divorce. It is very difficult to evolve a uniform set of laws applicable to marriage and divorce in this country. At present, we have got separate systems of personal laws which contain provisions on marriage that are in some respect entirely in conflict with one another. For instance, under the Muhammedan Law, certain kinds of union are looked upon with much favour, but under

the Hindu Law, unless modified by the custom, it will be treated as an incestuous union. That is why it is very difficult to evolve a common measure. The task of the framers of the Bill has, therefore, been considerably difficult, but nevertheless they must, having regard to the provisions of the Constitution, try to evolve a common measure of agreement which would cut across the personal laws of the different communities.

Looked at from this point of view, I find that the provisions of clause 4 of the Bill are satisfactory. In the first instance, it eschews the principle of religion, and secondly, it says that no parties who are not within the degrees of prohibited relationship would be prevented from marrying under this Act. When we turn to the definition of the expression "degrees of prohibited relationship", we find no reference to degrees of relationship either by consanguinity or by affinity, but in the two schedules...

Shri R. K. Chaudhuri (Gauhati): I rise on a point of order, Sir. Where is the Law Minister? I find that no Minister is taking charge of the Bill.

Mr. Deputy-Speaker: There is a Minister there.

Shri R. K. Chaudhuri: Do you mean to say that the Home Minister is taking charge of the Bill?

Shri N. P. Nathwani: Instead of defining the expression, what is done in the Bill is to enumerate...

Shri Velayudhan: Not the person of the Minister merely, but the Minister should be in charge of the Bill. Simply because some Ministers are here and they are talking, that does not mean that they are in charge of the Bill.

The Minister of Home Affairs and States (Dr. Katju): I am supposed to be in charge of the Bill for the time being and I am listening most carefully, Sir.

Mr. Deputy-Speaker: It is not something like an imposition class. While the hon. Minister may be talking, he may also be listening.

Shri N. P. Nathwani: I was referring to the definition of the expression "degrees of prohibited relationship". It does not define the "degrees of prohibited relationship", but what is sought to be done is the enumeration of certain unions as being covered by that expression. I consider this as a very satisfactory thing. So far as clause 4 is concerned, the provisions are good, but I regret to say that this Bill gives a complete go-by to this aspect of the question in clause 15 by allowing the customary marriages also to be registered under this Act. I shall presently advert to this, but before I do so, I will refer in passing to the controversy about the age limit. It is really a minor point. Some say it should be 21, 18 being considered as too premature. Others consider it as too advanced from the point of view of physical growth. Sir, I think a middle course can be adopted, and the age-limit can be reduced to 20. But if it is to be reduced to the age of 18, I think some protection by way of guardian's consent is necessary. I believe that if older and cooler heads were to take a hand in arranging the matches, particularly of youngsters, it would be more beneficial to them than if the matter were to be left to the young persons themselves.

I now come to Chapter III and I must express my disappointment at the whole chapter. It is not clear what is the predominant idea underlying this chapter. There have been several ideas mixed up in this and ultimately it has resulted in confusion. So far as provision is sought to be made for validating marriages, the validity of which is doubted, I have nothing to say. But so far as it is sought to be extended to marriages which are already valid, I have to make two observations. In the first instance, the provisions of

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this Bill are sought to be extended to marriages which are already valid, on the ground that it would confer upon the parties to the marriage performed under the personal law the benefits of inheritance and of monogamy. This seems to be a very far-fetched argument. It is possible for a Muslim to avail of this in order to take advantage of the principle of monogamy. But we should not frame a law merely to meet such a remote contingency.

Secondly, as far as the law of inheritance is concerned, I think we are going to make similar provision in the Hindu law and there will be no inducement for a marriage performed under the Hindu law for availing of this provision. My fear is that persons who have validly contracted a marriage under the personal law are likely to resort to this provision only to avail themselves of the liberal provisions of divorce, particularly if you are going to keep the clause relating to divorce by mutual consent. That is my apprehension—that the only persons whose marriages are validly contracted availing of this provision would be persons who would like their marriage tie to be terminated by resorting to divorce by mutual consent.

Sir, my second objection is against inclusion of customary marriages in the list of marriages which can be registered under this Act. I really fail to understand the real intention of the framers of the Bill. If they want to include such marriages also, the best and the proper way would be to include a proviso at a suitable place, namely, under clause 4. But the attitude of the framers and also of the majority of the Select Committee seems to be that of a person who is ready to strike, but afraid to wound. They are not putting in the forefront the customary law. They want to show that they are trying to evolve a uniform civil code, but, if I may say so, they are trying to introduce by the back-door the customary marriages. I think it would be better for us if we are to retain this clause to put it in the forefront and not to incur the charge of what in legal parlance is called "fraud on the law". Such a course would lower both the legislators and law in the esteem of public.

Now I come to the provisions regarding divorce. Whether there should be divorce, and if so, in what circumstances is a mattter on which public opinion has always differed and is likely to differ. Its consideration involves several matters like religion, morality, social and economic conditions and so on. If we try to study the law of divorce we find that human tendency has been to oscillate between stringency of marriage law which is difficult to be borne and the laxity which has developed into conditions difficult to tolerate. But whatever your conception of marriage might be, whether it is contractual or whether it is sacramental, one thing is certain that it is not a matter in which merely the contracting parties or the persons entering into the marriage are the only persons who are affected thereby. Society has also vital interest in the marriage of two persons who contract it, because really the welfare of the society depends on the integrity of that incomparable and unique institution of humanity, namely, the family, the home. Society is also interested in the proper upbringing of the young generation and in the cultivation of domestic virtues in them. Therefore, it means that the marriage should, as far as possible, be for life—it should be permanent. It should not be possible for a man to get an easy divorce, though I admit that in some circumstances, it would cause a grievous wrong to deny divorce altogether. But it is always a most vexed problem to lay down the proper grounds which can be considered as justifying divorce. If

we turn to clause 27 of the Bill we find several grounds mentioned in sub-clauses (a) to (k). Broadly speaking they fall under two heads.

The first covers the grounds which show misconduct or some loathsome disease or insanity on the part of the person from whom divorce is sought to be obtained. The other head covers the last ground, namely, (k) which permits divorce by mutual consent.

It is the latter part which has raised the main controversy. Various arguments have been advanced against such a provision for divorce by mutual consent. I will briefly advert to them. Some say that such a provision would be misused when parties act under the influence of fleeting passion. I know there is an amendment sought to be moved which would require the period of one year to elapse.

Dr. Rama Rao (Kakinada): It is already in the clause.

Shri N. P. Nathwani: I do not see a period of one year's interval here. The hon. Member may disagree with me, but I am entitled to my opinion.

An amendment is sought to be moved which would require one year's period to elapse before a decree for dissolution can be passed. But it is a mere palliative and not a cure. Persons who have once chosen to go to a court of law, who have already broadcast their differences are not likely to withdraw from that position, even though a period of one year has to elapse. The second argument, though a minor one, is that persons will contract marriages rather thoughtlessly if you provide that it can be dissolved by mutual consent. But really there is a more important objection against this clause. It is this, that it will lead persons to move recklessly and irresponsibly into new relationships. After some time novelty fades, glamour disappears and the persons who had contracted the relationship under a transient passion may like to dissociate from the existing match. Again he may be estranged because of a temporary or a passing dispute or disagreement and in the name of happiness a hue and cry will be raised. He would say that he is not happy; he is not going to live happily. He would be trying to convince every person that unless the marriage is dissolved he cannot live in happiness. These persons forget that happiness is not a ready-made article: it has to be created. They also forget that the institution of marriage is developed and built up as a result of self-restraint and self-control on the part of the persons entering into it.

There is another apprehension also which I may give expression to. I personally feel that, though the provision is that there should be mutual agreement, it will deteriorate into a unilateral or a one-sided affair. In the circumstances when one partner or spouse desires dissolution of the marriage, it would be very difficult for the other spouse to withdraw his or her consent because self-respect in some cases would dictate her to submit to the proposal. In other cases, there might be coercion. I am not referring to coercion in the crude sense of physical violence. They may not co-operate and it will bring about a complete estrangement. What has the other partner got to do in the circumstances? He or she is bound to say: 'If you are not going to live with me, I submit to your proposal'. Therefore, I am afraid that it might lead to dislocation in our society.

Apart from these abstract considerations, I personally feel that in a matter like this, we are rather going too fast. We have the Hindu Code Bill and in it, we are likely to provide for divorce. It would be an experiment on a large scale and we should await its reactions on the society before we introduce such a radical change as this.

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I will sum up my submission on the question of divorce in these words. It is an exceptional circumstance and a corrective. It can never take the place of a positive and creative thing. If divorce is to be used as a means of easy escape from the restrictions of marriage under the influence of a passing impulse or desire, it will lead us backward to the crude or primitive stages from which with pain and toil we have emerged.

Shri H. G. Vaishnav (Ambad): I rise to make my observations on this Bill and I want to say at the outset that I welcome this measure. At the same time, I desire to remove doubt as to why this Special Marriage Bill, which is a permissible measure, has come now when side by side the other social measure the Hindu Marriage and Divorce Bill is in progress. But I may at the same time say that though the theme of these two Bills is the same, the Special Marriage Bill has got a a wider outlook than the Hindu Marriage and Divorce Bill which is more of a personal nature. Of course anybody will understand that the main feature of the Special Marriage Bill is that it has a theme which wants to give encouragement or facilities to some special forms of marriages. There was a law enacted in 1872 known as Special Marriage Act and under that Act, special marriages were registered and persons of different religions could marry themselves but there was a condition that they had to declare—both of them—before the marriage authority that they did not belong to any religion. That was a great impediment for such marriages. So the first feature of this Bill is that any two persons belonging to different religions can marry without declaring that they do not belong to any religion. That means there is a great facility provided for inter-religious marriages without renouncing their religions. In that very Act, there was a provision on divorce. But it was restricted and the provisions proposed to be enacted in this Bill are of a far wider nature. Though the theme of both the enactments—the Hindu Marriage and Divorce Bill and this Bill—seems to be of the same nature, the Hindu Marriage and Divorce Bill does not go beyond a scope of personal law; it relates to marriage between two persons of the same religion. The Special Marriage Bill of 1954 which we are considering now is of the nature of a common law of the society which is developing in our country. It has provided some facilities for persons governed under a personal law to come under the common law and under one common theme of social system.

Objections were raised about clause 18 of this Bill. Clause 18 says that marriages performed under any system of marriage, under the personal law, can be registered under this Act and the effect will be that such a marriage will be deemed to be solemnized under this Act. Consequently, it gives all facilities and all rights along with the liabilities conferred under this Act. As per our Constitution, there is a theme which has been proposed that as far as possible there should be one Civil Code for all the people of Indian nationality. That is a very great aim and unless we have some such special channels by which a man governed by the personal law could enter under the theme of common law, such progress will be difficult. The importance of this clause 18 is that though a person might have been married under the personal law, under Hindu law or Muslim law, such marriages can be registered under clause 18 and the person can have the facility of this common law, namely the Special Marriage Act, enacted for the common betterment of Indian society as a whole.

Then, severance from the Hindu joint family after being married under the Special Marriage Act and the rights of succession being governed under the Indian Succession Act in spite of the personal law are also special features of the Bill. Objections have been raised to this and it has been asked why a man who is married under the Special Marriage Act should be considered to have severed his connections from the joint family. My submission is that this condition of severance from the joint family is essential for the general scheme of common law, because if a person remaining in a joint family has married under the Special Marriage Act there will be great complications as far as the structure of the joint family is concerned; there will be difficulties for the other members of the joint family. in so far as everyday problems are concerned. Therefore it is well that it is enacted that immediately a person is married under the Special Marriage Act he is deemed to have separated from his family. Of course he is not at all deprived of his share of property from the family. When there is no objection from any member of the joint family they can remain united. There is no prohibition in the Bill to the effect that they cannot remain joint. Only their legal rights are decided and their status is declared. Even if this provision is not there, there is a common provision in Hindu Law that immediately a person declares that he wants to be separated from the family, he can do so without any hitch. He can say: I do not want to remain in the joint family. And immediately he can get out. Therefore to avoid complications, the status of such a person is decided under clause 19 of this Bill.

When a person belonging to a joint Hindu family gets married under the Special Marriage Act it is not necessary that he should go through all the forms of the Hindu marriage. A joint Hindu family will be consisting of so many members. There may be differences of opinion among them. One may say "he may remain with us", others may say "we do not want him". In that way there can be differences.

If a person wants to separate from the joint family he can do so at any time, at his own will. But no other member can say that he is separated. His status is therefore made very clear in this law, that without any declaration on the part of the person the consequence is that he is separated from the joint family. As I said already, he is not deprived of his share of property. He is entitled to his own share. If he does not want the share from the property he can remain silent. It is not necessary that as soon as he is married under the Special Marriage Act the property should be divided and he should take his share even if he does not so desire.

What is done here is that simply the status is declared, that he is a member of a separate family. As long as the person is living no question arises. The complication may arise if after some years a person married under the Special Marriage Act dies. The difficulty or trouble will come to his children. This provision seeks to remove that difficulty.

Therefore it is a very significant feature in this Bill that immediately a person is married under the Special Marriage Act his severance from the joint family is automatic. That is a very genuine feature. Otherwise there will be difficulties. I see some amendments to the effect that if the other members want to keep him in the joint family he may remain in it. When the person concerned desires to remain united, there is no objection. But by law his status has to be made clear. And that is what has been done.

Some hon. Members have tried to show that there is a great discrepancy between clause 24 and clause 26. I do not see the discrepancy at all. Clause 26 deals with the legitimacy of children of void and voidable marriages. That means to say

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that if a marriage is declared to be void, the children will be considered to be legitimate notwithstanding the decree of nullity. That is the only provision made in clause 26. And what is the provision in clause 24? It is stated that if any of the conditions specified in clauses (a) to (d) of section 4 has not been fulfilled or the respondent was impotent at the time of the marriage and at the time of the institution of the suit, that will be declared to be a void marriage. If only impotency had been mentioned as the reason, then the difficulty as has been interpreted would have arisen, and the question can be asked "how an impotent man can have children and hence where is the necessity of clause 26?" But my submission is that apart from impotency there are other reasons mentioned in sub-clause (1) of clause 24. If a marriage is declared void under any of those other conditions, the question is what would be the status of the children. By clause 26 they are taken to be legitimate children. Therefore laying stress on how an impotent man can have children is a wrong interpretation without keeping in view the provisions of clause 24(1). As far as I see, there is inconsistency between clause 24 and clause 26.

Lastly, there are some provisions which, as far as I understand, are rather unnecessary. I would refer specially to clause 22 about restitution of conjugal rights. According to the present law a decree for restitution of conjugal rights can be given. But at the same time we see that even if the decree is passed it cannot be executed. Again only the husband is entitled to get the decree of restitution of conjugal rights, not the woman. Because, there is some possibility of that decree being executed by the husband if at all the decree is given in his favour. But if a decree for restitution of conjugal rights is given in favour of a wife, I do not know how the decree will be executed. That is impossible. Therefore, a provision which cannot be implemented should not be there in the Bill. Such a provision as restitution of conjugal rights is an old and antique provision.

Mr. Deputy-Speaker: Is it not the present law that a suit for restitution of conjugal rights can be filed by either party?

Shri H. G. Vaishnav: The husband only can get the decree.

Mr. Deputy-Speaker: Does he mean that the wife cannot file a suit?

Shri H. G. Vaishnav: Because it is impracticable.

Mr. Deputy-Speaker: I am talking of the Civil Procedure Code.

Shri H. G. Vaishnav: There has not been even a single suit, as far as my experience goes. (*Interruption*). My friends can point out any instance where a woman has been given a decree by a civil court for restitution of conjugal rights.

Mr. Deputy-Speaker: That may not be the experience of the hon. Member; but the women have got the civil rights.

Shri H. G. Vaishnav: Apart from that, such a provision, whether it may be in favour of the husband or in favour of the wife, is not proper in the present times. It is an antique provision. It seems in olden days a woman was regarded as a property. If a man is dispossessed of his property or if he wants to enjoy the property, he can get a decree from the court. But in the modern times a woman cannot be taken as a property. It is an old theory that among enjoyable properties, movable and immovable, which can be possessed by man, a woman was also included in such property. As men and women are equal human beings, we are all of the same status, and a person should not have a physical decree against another person. Therefore,

that provision seems to be rather unnecessary. Especially when there are the provisions of divorce and judicial separation in the Bill, this clause 22—restitution of conjugal rights—seems to be unnecessary.

Shri Mohiuddin (Hyderabad City): Sir, the institution of marriage and divorce has been continuously changing throughout the history of man in all parts of the world, and it has also been changing in India. During the last hundred years, in Europe, the change in the institution of marriage and divorce was rapid with the transformation in the society caused by education, economic status, and political rights. It is rather difficult to evaluate each of these three factors and say which of them is more important in the changes that were introduced, especially in divorce, in Europe. But, I wish to draw the attention of the House to one very important factor, that in addition to the political rights that were given to women and the educational and social status, the economic status of women was a very important factor in regard to changes in marriage and divorce laws in Europe and in America. In the United States, 30 to 35 per cent. of married women earn their own livelihood. It really makes a vast difference in a woman's status in the society and in her status in the family. Now, what is the condition in India? Regarding the economic status of women as far as her independent economic conditions are concerned, the census report gives some interesting figures. In rural areas 73.5 per cent. women are absolutely dependent on husband, father or other bread-winner. In urban areas, the percentage of women wholly dependent on husband, father or other bread-winners is over 88 per cent. Earning dependents amongst families in rural areas are only 16 per cent. where large number of women go out for work in the fields and other occupations; earning dependents among females in urban areas is only 4.5 per cent. and the self-supporting percentage of women is 10.4 per cent. in rural areas and 7·4 per cent. in urban areas.

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Now, Sir, it is a matter of great importance that our laws regarding marriage, and especially regarding divorce must be in consonance with the economic status of women, otherwise there will be a great disturbance and great strain in the society which will perhaps be not desirable. This is an important consideration which we have to bear in mind when we consider the clause, especially regarding the divorce by consent. In regard to divorce, the most advanced countries in Europe and America still have not adopted the law of divorce by consent. In Russia it was provided immediately after the Bolshevik Revolution that the husband or the wife can simply go to the court and register their separation from each other; or any party can go and register the separation from the other. But, it was provided even in Russian Family Code, that if they have children, they must make some provision for the children and such provision should be agreed upon by both the parties; if they did not agree, the court will lay down the provisions as to what should be provided for the children.

> "However, in 1936 and again in 1944 much more strict divorce laws were put into effect that both increased the cost of divorce and, as a result of an intense anti-divorce educational campaign, caused it to be viewed as an undesirable mode of adjusting family affairs."

The result of these changes in the Soviet rules has been that since 1944, it is said, it is perhaps more difficult than in most of the States, even the American States, to obtain a divorce in Soviet Union. I am quoting this from a publication by MacIver and Charles H. Page on social laws and development of society.

Now, the provision that has been made in our Bill regarding divorce by consent is really a peculiar provision.

[Shri Mohiuddin]

It does not say as to what would happen to the children if there are any. There is no provision made in this connection. One important consideration that I have in mind in respect of this provision with regard to divorce by consent is that, on the one hand we are trying to provide that in marriages there should not be any dowry and that the evil of dowry should be removed. But, when the provision is there for divorce by consent, I am sure we are introducing a bigger evil and the evil is that the party who has to give consent will demand money for the consent. If money is forthcoming, consent will be given: otherwise not. It is an evil and a very great evil against which we should guard ourselves and the society. What is the meaning of divorce by consent? In the U.S.A. during the last 20 or 30 years, there has developed a sort of a marriage which is called companionate marriage. Companionate marriage was not a marriage; but it was a partnership of a man and a woman and it was known to the society that they live as man and woman. Only those persons entered into this companionate marriage who did not wish to have a family, and who retained their right to separate as soon as they wanted. Divorce by consent introduces an element of companionate marriage in our laws which is extremely undesirable and I think at least this clause of the Bill should be deleted. An amendment to this clause of the Bill has been proposed. It might be considered, of course, on merits. But, the fundamental principle should be laid down that if there is to be a divorce, there must be some reason for it. There cannot be a divorce without any reason.

Shri Velayudhan: There cannot be a divorce without any reason.

Shri Mohiuddin: Divorce by consent gives permission to the parties to separate themselves without any reason as far as the law is concerned.

An Hon. Member: The law is wrong.

Shri Mohiuddin: He need not go to the court and give reasons to anyone. They can even agree beforehand that, after three years, they will apply to the court for separation under this provision.

An Hon. Member: Before marriage?

Shri Mohiuddin: Yes; before marriage.

Shri C. R. Narasimhan (Krishnagiri): Is not separation for one year a reasonable ground?

Shri Mohiuddin: They may live separately for one year by agreement. I am absolutely opposed to the principle of divorce by consent.

There are some other important points. For example, the Indian Succession Act has been made obligatory on all those who register their marriages under this Act. I have not been able to find out the reason why the Indian Succession Act is made obligatory. There were certain circumstances under which in the old Act of 1872 or 1923 Indian Succession Act was made obligatory. When the scope of the Bill is now extended, there does not appear to be any reason why the Indian Succession Act should apply compulsorily to every person who wants to have his marriage registered under this Act. The Indian Succession Act copies the British Inheritance Act and gives equal shares to the sons and daughters. Personal laws in India are, of course, different. An attempt may be made in the future to bring about uniformity. But, the Hindu Code which was introduced 5 years ago did not contain provisions that there will be equal distribution; there was a difference in the proportion between sons and daughters. If that law is to be brought into force, I really do not understand why, under this Act, the Indian Succession Act should be made obligatory. It would simply mean that those who are in

favour of their marriages registered under this Act, will be prevented because they do not like their sons to be governed by the Indian Succession Act. If the aim of this Bill is that we should have monogamy in India. I think we should confine ourselves to that particular aim. We should not confuse the Bill by introducing more than one reform. We are introducing the reform of marriage and divorce. At the same time, we are introducing a reform in the inheritance laws and succession laws. If these two things are brought together in one Bill, I am afraid, the popularity of this Act will be hampered and there may be only very few people who will come forward to have their marriages registered under this Act. I would suggest that a provision should be made that if persons belonging to the same religion register their marriage under this Act, they should declare that they will follow their personal law of succession. If persons of different religions register their marriage under this Act, they should be given the option to declare at the time of marriage which law of succession they will follow. This declaration will be an irrevocable contract and cannot be broken by either party. If this amendment is introduced, I am sure that this Act will be a most popular Act in India as far as marriages are concerned. Very large number of persons, even though they belong to the same religion, will have their marriages registered under this Act because it provides for monogamy. That would be a vital reform which will be introduced and acted upon by very large numbers of persons in India.

The prohibited relationship also causes complication. If my suggestion regarding option being given regarding adoption of the law of inheritance is accepted, it means that the customary law is brought into this Act. Similarly, customary law has been brought into the Act in sub-clause (e) of clause 15, that is, registration after performance of marriage with religious ceremony. I suggest that if we want this Act to be an Act for monogamy, we should bring in this provision that, if by custom in a community marriage among cousins is permitted, it should be permitted here. Marriage between cousins is permitted not only all over the world, but amongst a large proportion of the Indian population, that is, Christians, Parsis, Muslims and others. It is very common. I do not see how it can be prohibited under any common civil code that may be adopted in future. I would, therefore, suggest that if we wish to have one complete reform regarding monogamy and divorce, we should introduce customary laws both in regard to marriage amongst cousins and the law of inheritance according to the personal laws of the parties to the marriage.

Shri C. R. Iyyunni (Trichur): I welcome this Bill for the reason that this is a Bill that would give relief to a very large number of people belonging to different communities who, under other circumstances, will not be in a position to marry.

For example, in Cochin a few years ago there was a dispute between the religious authorities and the parishoners of one parish, and the result was that it was impossible for any member of that parish to get himself married. At that time, the people there, particularly those who were affected by that, put in a petition before Government stating that for a number of years they had not been able to get themselves married. They wanted to remain as Christians and at the same time to get the marriage performed in the church. The Government passed a law called the Cochin Civil Marriage Act by which the Catholics could marry each other even though they did not go to a church, and such marriages would be valid. It is from that point of view I say that this Bill is welcome.

Mr. Deputy-Speaker: Is there any sect among the Christians which avoids the church also?

Shri C. R. Iyyunni: No. In my part of the country I do not think there is anybody who calls himself a Christian but does not go to any church whatever.

Mr. Deputy-Speaker: How does it facilitate such marriages?

Shri C. R. Iyyunni: The Bill is there.

Mr. Deputy-Speaker: What was the need?

Shri C. R. Iyyunni: The Bill originated because of the diability of some members of the Catholic church to get themselves married within the church. So, when this Bill was passed, the church immediately came round and allowed those people to get themselves married. That is exactly the advantage that we will have here.

In Japan it is said that any member belonging to any community can marry any other member belonging to any other community or profession or anything else. Such a thing will be possible only under this. If there is a community, that community will have certain rules and regulations and laws and so on. Suppose one member of that community does not want to agree to accept all the rules and regulations that are laid down by the community, what is his relief? Suppose he wants to marry a girl whom he likes and the laws and rules and regulations of the community would not permit him to marry, immediately he takes recourse to this Bill that is before us. That is how I say the importance of this Bill is brought to the front.

With regard to one or two things, of course. I cannot agree with this Bill. I am a Catholic and Catholics do not allow divorce for very valid reasons. It is true in families there will be disputes between husband and wife and it may develop into something more than a dispute, and it may become difficult and almost intolerable so far as the husband and the wife are concerned. Now, for many years divorce has been allowed in the United States of America, United Kingdom and Soviet Russia.

Mr. Deputy-Speaker: Among catholics also?

Shri C. R. Iyyunni: No, they do not.

Now, I will just read a small passage from the *Readers' Digest* which is a magazine well known throughout the world and which has a circulation of 15½ million. There, somebody writes like this:

> "We ask for community help against polio, cancer and heart disease. Why not against divorce? Surely that is a community problem."

Now, the position is this. It is true that out of a hundred families there may be one per cent. where there will be difficulties in the form of family disputes which may end in something very serious, but if once a chance is allowed for breaking up the marriage, the difficulties would be thousand times more. Now, you are trying to provide or give remedy for certain people who have come together but who cannot agree between themselves. In the marriage system of the Catholics and also the Protestants they marry for better or worse and till they die. It may be said that the consent of the party is necessary, that there is an element of contract in it, but it is much more than a contract. It is, as in the case of the Brahmins, a sacrament. There is the element of contract and the consent of the parties is necessary, but besides that there is something more. There is some sanctity attached to the relation that has been created between the husband and the wife.

From what I have been able to gather, in our country in the case of Hindus, except the Brahmins, the Kshatriyas and the Vaishyas, there is no difficulty for divorce among the

rest of the classes who constitute more than 75 per cent. Even without this law, divorce is still there and they can take advantage of it. As Mr. Achuthan said there is no difficulty. Suppose a man and wife have been living together for a pretty long period. Probably issues have been born. Even then if the husband says "I do not want her", there is an end of the matter; or, if the wife says "I do not want him", there is an end of the matter. They separate. So, it is the Brahmins and other people among whom this divorce does not exist, who experience this difficulty. They will necessarily feel the difficulty. The point is once you allow a chance for divorce—the various provisions you have made may be strict—gradually they will become less and less rigid, with the result that even for the mere asking of it.

What is the position in the United States now? Out of every four marriages, one marriage is dissolved. "X" will become the wife of half a dozen or probably a dozen people. We know what took place in regard to Edward VIII who ought to have been the King of England. He wanted to marry a girl who happened to be married to somebody else. So, they came to some sort of adjustment. Otherwise, how can such a thing take place?

There is a provision here that if both the parties agree, they can bring about a divorce. Probably, if the man wants to marry some other girl, and the girl wants to marry some other man whom she likes, then there is an end of the whole matter. They can easily do it. That is what is taking place, when you try to extend the law to the whole territory of India, which is so large that it is Europe minus Russia, so that it will be a law binding on all people.

Shri Venkataraman: No.

Shri C. R. Iyyunni: That is what it is. If it is an enabling measure, there will not be much difficulty. If the system of marriage that is allowed amongst the different communities is not allowed, and there is only this law, then the matter becomes very difficult. This is not a permissive measure; in that case, it becomes a compulsory measure. Now that this is a permissive measure, my submission is that there will be a break-up of the social fabric. Supposing this divorce is allowed, what will be our condition? Suppose a girl obtains divorce, the person who is going to marry her will think, she was not good enough for her other husband, that is why they had to part, therefore, I am not going to marry her.

Kumari Annie Mascarene (Trivandrum): What about the man?

Shri C. R. Iyyunni: Whether it is man or woman, it is the same thing. You can take advantage of it. Both the man and woman can take advantage of this. My point is that as a result of this law, there will be a break-up of the social fabric. Even in the U.S.A., the effect of the divorce law is such that a stage has come when divorce is considered to be an unmixed evil. They are now trying to find out the reasons why such break-up occurs. With a view to removing the defects, they have formed societies or groups consisting of a doctor, a clergyman, a lawyer, a social worker and some others. Whenever there is any trouble in the family, they immediately go to this group of people, and explain to them the conditions under which the estrangment is taking place, and ask for the remedies. This group of persons suggests certain means, such as persuasion etc., to bring these estranged people back together, and then the couples are reconciled. In the *Readers' Digest,* they say that more than 250 cases had been brought to their notice, and they have been able to deal with 225 cases very satisfactorily. So, this is the position even in the U.S.A.

[Shri C. R. Iyyunni]

My submission is, let us not make any provisions in the law, which will later land us in difficulties. There are certain families where the husband and wife cannot agree for various reasons. But is this the only solution to that? It is true that in a moment of heat or passion or something like that, the girl will go and put in a petition before the court, or the man may go and put in a petition before the court, from which they will find it difficult to withdraw later. That is a difficulty that has to be faced. Does the mere fact that divorce is granted make their position in any way better? Certainly not. So, what I would suggest is, as you have suggested earlier, let there be some period, say five years or ten years, within which time, let us see how the law relating to monogamy works. Let us see what is really going to happen during this period.

As a matter of fact, the law relating to inheritance should have preceded the law of divorce. In the case of women, the difficulty is that they have got no property rights. Supposing a girl gets divorce from a husband, she must be able to stand on her own legs. But there is no provision made for giving her any property rights. So, the law relating to inheritance should have preceded the law of divorce, and not *vice versa*. If that had been done, probably, there would not have been so much pressure for divorce. After all, who are the people that ask for divorce? As I said earlier, seventy-five per cent. of the people have, even otherwise, got the law in their favour. Only twenty-five per cent. are asking for divorce. I am not saying anything disparaging about them, but it is the society ladies who want this divorce provision to be put in.

Mr. Deputy-Speaker: Is there any definition of society ladies in the Bill?

Shri Velayudhan: Those who are members of the clubs.

Shri C. R. Iyyunni: What is the principal difference between the ladies in England and U.S.A. and the ladies in India? There, they have got free social intercourse, whereas here they do not have so much of free social intercourse. I would call such of those ladies who want free social intercourse as society ladies, and not the others. That is how I can define the term.

What I am saying is that this divorce is a very serious matter, which should be considered well. I happen to be a Catholic, and among Catholics, divorce is not allowed. I do agree that there may be many cases where there is estrangement between husband and wife. But in view of the fact that there is no escape out of it, somehow or other, they will try to adjust themselves, as they are adjusting themselves. In a very few cases, there may be difficulties. I quite agree. But as between a number of cases where there is a complete disagreement, and the necessity to preserve the solidarity or stability of society, which do you prefer? That is the only question, so far as I am concerned.

Shri Nambiar (Mayuram): It is not very clear, whether the hon. Member is supporting or opposing divorce. He may kindly explain that to us.

Shri C. R. Iyyunni: What I am suggesting is that so far as divorce is concerned, there is plenty of time to think over it and come to a decision. After ten years, probably I myself may be convinced of your views. That is what I say. But just at present, where is the necessity for divorce?

Shri Tandon (Allahabad Distt—West): Just at present, do not have it.

Shri C. R. Iyyunni: That is exactly what I say.

There are one or two more points, on which I would like to say a word. The first is with regard to the publication of the notice of an intended marriage. The Marriage Officer is not bound to notify it in any paper. It is enough if a notification is published, and a copy thereof is put up in some conspicuous place in his office. But who is going to take the trouble of going to his office? Will anybody go there and see the notice that is put up in his office? After all, why should there be this notice at all? It is there, so that other people might know about the marriage, especially the people who are interested in the marriage. If the notice is thus necessary, what I would say is that it must be published in a newspaper and given due publicity; it must be published in a newspaper circulating in the place where the marriage is going to be solemnised, and also the places where the parties to the marriage have come from, or where they are permanently residing. There is no use simply putting up the notice in a conspicuous place in the office of the registrar of marriages. That does not do any good to anybody. If you are serious about it, you should see that it is published in the newspapers. If you are not serious about it, then all my words are useless.

Mr. Deputy-Speaker: The hon. Member may speak during the clause by clause discussion. He may conclude now.

पंडित डी० एन० तिवारी (सारन दक्षिण): उपाध्यक्ष महोदय, गत सामूहिक चुनाव के समय जब हम लोग कांस्टीट्यूइंसियों में घूम रहे थे हिन्दू कोड बिल का ज़िक्र बराबर आया करता था और हमारी कांस्स्टीट्यूएंसी के लोग यह जानने के लिये बहुत उत्सुक थे कि इस सम्बन्ध में हम लोग क्या करने जा रहे हैं। सौभाग्य यह था कि जनरल चुनाव से पहले हिन्दू कोड बिल पहले सदन से वापस ले लिया गया था नहीं तो कितने ही लोग इसके शिकार हो जात यानी इसके कारण हार जाते कहा नहीं जा सकता। पहले सदन के कुछ सदस्य जो बहुत फारवर्ड थे और जिन लोगों ने हिन्दू कोड बिल का बहुत समर्थन किया था वे सदस्य और सदस्यायें इसी बिना पर हार भी गये।

आचार्य कृपालानी (भागलपुर व पूर्निया): बदल गये।

पंडित डी० एन० तिवारी: लेकिन मैं समझता हूं कि हिन्दू समाज के सुधार का कानून या हिन्दू समाज में स्त्री पुरुष का आपस का व्यवहार कैसा हो, इसका कानून टुकड़े टुकड़े करके नहीं आना चाहिये था, एक साथ आना चाहिये था, ताकि सारा नक्शा हमारे सामने होता और हमको मालूम होता कि हमें क्या करना है। आज एक बिल सामने आता है तो एक बात सामने आती है, कल दूसरा बिल सामने आयेगा तो दूसरी बात सामने आयेगी। इससे लोगों में गड़बड़ी पैदा होती है और संसद् का समय भी बहुत अधिक खर्च होता है। अगर एक साथ होता तो जितनी बातें थीं वह एक साथ कह दी जातीं और उसमें समय कम लगता।

हिन्दू कोड बिल से और स्पेशल मैरिज बिल से कोई सम्बन्ध नहीं है। हिन्दू कोड बिल या हिन्दू मैरिज एंड डाइवोर्स बिल दूसरी चीज़ है जो कि हिन्दू समाज के संगठन से सम्बन्ध रखती है। यह तो स्पेशल मैरिज बिल है। यह न केवल हमारे हिन्दू समाज से सम्बन्ध रखता है बल्कि यह सारे देश के ऐसे लोगों के शादी विवाह से सम्बन्ध रखता है जिनको एक रोग सा हो गया है। वह प्रेम का रोग है।

श्री गाडगील (पूना मध्य): ईश्वर भी उससे नहीं बचा।

पंडित डी० एन० तिवारी: उस रोग को कैसे ठीक किया जाय, जो उसके शिकार हो

[पंडित डी० एन० तिवारी]

गये हैं उनका सम्बन्ध कैसे ठीक किया जाय इसी लिये यह बिल आया है। मैं नहीं समझता कि इस बिल पर इतना ज्यादा बात कहने की ज़रूरत है। मैं यह भी नहीं चाहता कि यह स्पेशल मैरिज बिल हिन्दू कोड बिल के साथ जोड़ा जाय। वह एक बहुत पवित्र चीज़ है। हमारी परम्परायें आदि काल से चली आ रही हैं। हमारे समाज में हर मौके के लिये ठीक ठीक कानून है और हर तरह की स्थिति के लिये गुंजाइश है। उसमें नाजायज सन्तान नहीं होती है। क्योंकि गन्धर्व विवाह को भी एक प्रकार का विवाह समझा जाता है। बिला वजह इन दोनों बिलों (Bills) को मिला दिया जाता है। मैं समझता हूं कि वह एक अलग चीज़ है और यह एक अलग चीज है। अब हमें देखना है कि जो लोग बहुत फारवर्ड हैं और हम लोगों को रिएक्शनरी कहते हैं उन लोगों का सम्बन्ध कैसे हो।

हम जानते हैं कि हिन्दुस्तान में ऐसे लोग अधिक नहीं हैं, शायद दो, चार हज़ार स्त्री और पुरुष ऐसे होंगे जिन के लिये यह बिल लागू हो सकता है, ऐसे लोगों की संख्या बहुत अधिक नहीं होगी लेकिन चाहे कितने ही कम क्यों न हों हम नहीं चाहते कि हमारे देश में एक भी संतान नाजायज समझी जाय। उसको कानन जायज करार दिया जाय और वह नाजायज न रहे। लेकिन जब हमारे यहां स्पेशल मैरिज बिल में ऐसे ऐसे बहुत से रिस्ट्रिक्शंस हैं कि हम समझ नहीं सकते कि उनका क्या अर्थ है। जब हम यह स्पेशल मैरिज बिल बनाने जा रहे हैं तो उसका कारण भी स्पेशल होना चाहिये।

क्लाज़ ४ में जो दिया गया है कि ऐसे लोगों की शादी नहीं हो सकती जो 'idiot' हैं, either party is an idiot. हम अक्सर देखते हैं कि अधिक बुद्धिमान लोग अपन से कम अक्ल वालों को 'ईडियट' कह दिया करते हैं, तो इसके मुताबिक अब उनकी शादी न हो, यह मेरी समझ में नहीं आता। ईडियट एक कम्पेरेटिव चीज़ है। आपके सामने मैं बेवकूफ हो सकता हूं और कोई एक दूसरा आदमी मेरे सामने बेवकूफ हो सकता है।

श्री सी० डी० पांडे (ज़िला नैनीताल व ज़िला अलमोड़ा—दक्षिण पश्चिम व ज़िला बरेली—उत्तर) : सब रिऐक्शनरीज़ बेवकूफ समझे जाते हैं।

पंडित डी० एन० तिवारी : अब ऐसे लोगों की शादी न हो यह कुछ समझ में नहीं आता। अगर अनसाउन्ड माइन्ड के लिये कहा जाय कि उसकी शादी न हो सके, तो हम उसको समझ सकते हैं। ठीक है जो अनसाउन्ड माइन्ड का हो और पागल हो उसकी शादी न हो, लेकिन अगर कोई बेवकूफ हो या बुद्धू सा हो तो उसकी शादी न हो तो मैं आप से पूछूं कि फिर सिपाही का कौन काम करेगा और सेना में कौन जायेगा—यह देखना होगा। देश में बहुत तरह तरह के काम और व्यवसाय हैं। यदि सब लोग होशियार हो जायें तो संसार नहीं चल सकता।

दूसरी बात जो इसमें यह दिया हुआ है कि "the parties have completed the age of 21 years." मैं समझता हूं कि इसमें कुछ सुधार किया जाना चाहिये। मैं नहीं समझता कि यह प्रेम का रोग उन लोगों को होता है जो २१ वर्ष के नीचे होते हैं और अगर २१ वर्ष से नीचे यह बात हो तो मैं उसको प्रेम न समझ कर केवल एक आदेश की बात समझता हूं। २१ वर्ष से नीचे आयु वालों को यह समझने की बुद्धि नहीं होती है कि हम जो कुछ कर रहे हैं वह ठीक कर रहे हैं या नहीं। आप कहते हैं कि पुरुषों के वास्ते २१ वर्ष हो और स्त्रियों के लिये १८ वर्ष, तो यह १८

वर्ष क्यों उन के लिये रखा जाय। हमने सदनों में बराबर इस चीज़ को देखा है कि मैरेज की एज (age) को ऊंचा उठाने की कोशिश बराबर की गई है और यदि आप यह स्पेशल मैरेज का अधिकार देने जा रहे हैं तो जैसा कि पहले से सिविल मैरेज ऐक्ट में भी २१ वर्ष है तो मैं नहीं समझता कि यह एज लिमिट २१ से नीचे घटा कर क्यों रखा जाय, २१ वर्ष के नीचे तो माइनर माना जाता है और उसको आप कोई जायदाद का हक भी नहीं देते न उसको वोट का ही अधिकार होता है। तो मैं नहीं समझता कि उसको शादी क्यों करने दी जाय अपने मन से, उसके लिये गार्जियन की कंसेंट होना बहुत जरूरी है। । १८ और १९ वर्ष आप रख सकते हैं लेकिन उसमें यह लगा दीजिये कि गार्जियन्स की कंसेंट हो, गार्जियन्स की कैटेगिरी में फादर, मदर, अपना चचा और उस का भाई ट्रीट किये जायेंगे क्योंकि अगर गार्जियन के टर्म को हम खुला अनरिस्ट्रिक्टेड छोड़ देंगे तो उसमें कहीं कहीं जुल्म हो जाया करता है।

तीसरा इसमें जो यह दिया हुआ है कि "The parties are not within the degrees of prohibited relationship." वह भी ठीक नहीं जंचता। हिन्दू शास्त्र के मुताबिक जो शादी मान्य नहीं है जो शादी धर्म के अनुकूल नहीं है उसको प्राहिबिटेड रिलेशनशिप कहा है। उसमें आपने बहुत से सम्बन्ध दे दिये हैं जिन में शादी नहीं होनी चाहिये। मैं आपको बतलाऊं कि हमारे दक्षिण भारत में रिवाज़ है, वहां लोग अपनी बहिन की लड़की से शादी कर लेते हैं तो अब इस कानून के मुताबिक वह भी विवाह प्राहिबिटेड एरिया में आ जायेगा। केवल भाई बहिन के बीच में अपने खून के सम्बन्धी को छोड़ कर शादी हो जाय, उस कानून में इसकी परमिशन मिलनी चाहिये।

इसके अलावा और भी कई बातें हैं जो खटकती हैं। डाइवोर्स किन किन हालतों में जायज़ समझा जायेगा, उसे पढ़ कर तो मुझे एक हंसी सी आती है। पहले तो सिफलिस, गिनोरिया आदि इनक्यूरेबुल डिज़ीज़ेज़ मानी जाती थी, लेकिन साइंस ने आज प्राणी मात्र को उन से छुटकारा दिला दिया है। दो आदमियों की शादी हो जाय और किसी को अगर ऐसी बीमारी हो जाय तो आप उसको डाइवोर्स कर दीजिये यह अजीब बात है। मैं आपको उस खतरे की तरफ ध्यान दिलाऊं जिसके लिये आपने कोई प्रावीज़न नहीं किया है। कहीं डाइवोर्स अगर एडवान्स्ड एज में हुआ तो जो लोग डाइवोर्स के बहुत पक्ष में हैं उन से मैं पूछना चाहता हूं कि जब एज के साथ उनका आकर्षण चला जायेगा तब उनका क्या होगा और तब उनको कौन पूछने वाला होगा खास कर ऐसे लोगों के जिनके बाल बच्चे नहीं हैं उनकी क्या गति होगी और यदि बाल बच्चे नाबालिग हुए तो उनको पालने वाला कौन होगा, इन सब बातों का विचार किये बिना, डाइवोर्स इतना आसान कर देना मैं नहीं समझता कि उचित होगा। इसमें हमें देखना है कि कोई ऐसी बात न आ जाय जिससे अड़चन बढ़े। इस बिल में उन सारी बातों को हम लाना भी नहीं चाहते, लेकिन यह हमारे जो दो, चार हज़ार आदमी स्त्री और पुरुष देश में हैं उन्हें एक रास्ता देना है, क्योंकि हिन्दू समाज में करीब ७०, ७५ फी सैंकड़ा ऐसे लोग हैं जिन्हें न स्पेशल मैरिज बिल की जरूरत है और न डाइवोर्स बिल की ज़रूरत है, उन के यहां पहले से इतनी लिबरैल्टी मौजूद है कि अगर दोनों का मन नहीं मिलता है तो छोड़ देते हैं और दूसरी शादी कर लेते हैं। यह बिल अथवा कानून तो केवल उन लोगों पर अपना असर डालेगा जो अपने को बहुत अक्लमन्द समझते हैं, या अपने को

[पंडित डी० एन० तिवारी]

हाई कास्ट समझते हैं और जिनमें पहले डाइवोर्स नहीं था, पुर्नविवाह नहीं था और विधवा विवाह भी नहीं था, उन्हीं के खिलाफ यह बिल है। और भी जो सुधार के कुछ बिल आये हैं या आ रहे हैं वह भी उन्हीं के सम्बन्ध के हैं। ऐसे लोगों की संख्या २० या २५ परसेंट से अधिक नहीं होगी, या शायद इससे कम ही होगी। यदि आप उन लोगों के खिलाफ बिल लाना चाहते हैं या उन लोगों के कस्टम्स, रिवाज और धार्मिक भावनाओं के खिलाफ कानून बनाना चाहते हैं तो मैं यह ज़रूर कहूंगा कि कम से कम उन लोगों से भी आप को राय लेनी चाहिये जिस समाज में कि आप इसको लागू करना चाहते हैं।

मैं हिन्दू मैरेज एंड डाइवोर्स बिल का तो विरोध करता हूं, लेकिन मैं इस बिल का समर्थन करता हूं, क्योंकि वह जो चीज़ है अलग चीज़ है।

एक माननीय सदस्य : आप विरोध करते हैं या समर्थन ?

पंडित डी० एन० तिवारी : मैं इस स्पेशल मैरेज बिल का समर्थन करता हूं और हिन्दू मैरेज एंड डाइवोर्स बिल का विरोध। आप यदि उन लोगों से राय लीजिये जिन के समाज में आपको उससे काम लेना है तो मैं समझता हूं कि १५, २० परसेंट से ज्यादा वोट आपको नहीं मिलेंगे। यदि आप जीत सकते हैं तो उन्हीं लोगों की वोटों से जीतेंगे जिनकी संख्या ७५ फी सदी है और जिनके समाज में यह चीज़ चालू है।

श्री सत्येन्द्र नारायण सिंह (गया पश्चिम): हिन्दू धर्म ग्रन्थों में ऐसा नहीं है।

पंडित डी० एन० तिवारी : आपको धर्म ग्रन्थों की बात नहीं मालूम, उसका अधिकार हमको है। आप हमसे पूछिये। मैं इस बिल का विरोध नहीं करता। जो दो चार हज़ार लोग देश में हैं उन के फायदे के लिये हमें इस को पास कर देना चाहिये। उन्हें एक outlet देना होगा।

Mr. Deputy-Speaker: Are there any hon. Members who have not spoken at all during this session?

Shri P. R. Rao (Warangal) *rose*—

Mr. Deputy-Speaker: I will try to give him an opportunity some time. Is there any other hon. Member who has not spoken at all on any subject during this session? I want to give opportunities to hon. Members who are making a maiden speech in this session; though they may not be maidens, and though they might have made maiden speeches earlier, during previous sessions, they might not have spoken at all during this session. Such hon. Members will kindly rise in their seats. I shall note down their names and shall call upon them to speak on this Bill.

Dr. Suresh Chandra (Aurangabad): What is the use of asking them to speak on this Bill when they are not interested in this Bill. Some hon. Members might have had no chance to speak on the subject on which they would have liked to speak, and so what is the use of their speaking on this Bill?

Mr. Deputy-Speaker: I find only one hon. Member,—Shri P. R. Rao. why did he not give a chit to me? I will call upon Shri P. R. Rao now to speak. I will then call hon. Members according to the parties, groups, affiliations—whoever can contribute and has got something to say either on the marriage or the divorce aspect of the Bill, alternatively or collectively.

Shri R. K. Chaudhuri: The next opportunity may be given to those who have not spoken on the Hindu Marriage and Divorce Bill.

Mr. Deputy-Speaker: Very well. Shri P. R. Rao. I will call upon Acharya Kripalani next.

श्री पी० आर० राव : जनाब डिप्टी स्पीकर साहब, आप ने जो मौका मुझे दिया उस के लिए मैं आपका शुक्रिया अदा करता हूं ।

मैं इस बिल के लिए खुशामदीद कहता हूं इस लिए कि यह अधिकांश महिलाओं को, खासकर नौजवानों को एक वसीय मौका देता है कि विवाह के सम्बन्ध में जो कायदे हैं, हिन्दू सिस्टम में जिस तरह की पाबन्दियां हैं, उन पाबन्दियों को हटाने वाला है ।

साथ ही साथ इस में चन्द नुकायस भी हैं जिन को प्वाइंट आउट करने के लिए मैं भाषण कर रहा हूं, खासकर हमारे इस भारत देश में और जमींदार समाज में, मैं कह सकता हूं कि महिलाओं को बिल्कुल स्वतंत्रता नहीं है. वह एक तरह से गुलामी की ही जिन्दगी गुजार रही हैं । मैं ने सुना है, बाज लेडी मेम्बर्स ने इस बात पर नाराजी का इजहार किया है, हो सकता है कि वह अपने आप को जरा हकीर या कम समझना पसन्द न करती हों, लेकिन यह एक सच बात है, कि आज हालात ऐसे हैं कि मर्द इस समाज में अपना अधिकार जमा कर बैठा है और औरतों को किसी तरह का हक देने के लिये तैयार नहीं रहता है, यानी वह जब चाहे अपनी औरत को छोड़ सकता है, उसको मार सकता है, पीट सकता है और उसको घर से बाहर निकाल सकता है । लेकिन औरतों को कोई मौका नहीं है कि वह अपने हक को साबित करने के लिये कुछ कर सकें । आज औरत को मर्द दस, बीस रुपये दे कर घर से बाहर निकाल कर बेदखल कर सकता है। यह जब हम सुनते हैं और जिसको हम रोजाना अपनी जिन्दगी में देख रहे हैं, तो बहुत दुखदायी मालूम होता है । इस हालत को देखते हुए इस बिल के अन्दर, इस स्पेशल मैरेज ऐक्ट के तहत में औरत को भी बराबर का अधिकार जायदाद में दिया जा रहा है । यह बहुत ही अच्छी चीज़ है और इसलिये मैं इस बिल को खुशामदीद कहता हूं ।

साथ ही साथ इस बिल में ऐसे नुकायस भी हैं जिन को कि अगर हम दूर नहीं करते तो यह बिल कामयाब नहीं हो सकता है । इसमें यह है कि शादी करने के लिये २१ साल उमर की कैद रखी गई है । यह बहुत नाजायज़ चीज़ है और खास कर औरतों के लिये तो यह और भी बेमूल्य और नाइंसाफी है । इस लिये कि मैं देखता हूं, खास कर जनूबी हिन्दुस्तान में, कि लड़कियां १३, १४ साल की उम्र में शादी के लायक हो जाती हैं । इस बिल के मुताबिक उनको सात साल तक यानी २१ साल की उम्र को पहुंचने तक शादी के लिये इन्तजार करना पड़ेगा हालांकि वह हमारे कांस्टिट्यूशन के लिहाज़ से १८ साल की ही उम्र में मैजारिटी को पहुंच जाती हैं । इस लिहाज़ से इस बिल में १८ साल की कैद रखना भी एक हद तक इंसाफ की बात हो सकती थी, लेकिन २१ साल की जो उम्र रखी गई है वह नाइंसाफी है । हमको यह जानना चाहिये कि मर्द के मुकाबिले में औरत बहुत जल्दी बड़ी होती है क्योंकि वह १३, १४ साल की उम्र में बालिगीयत को पहुंच जाती है जब कि मर्द १८ साल की उम्र तक भी बालिगीयत को नहीं पहुंचता । इसलिये जो २१ साल की कैद है इसको कम करना चाहिये और १८ साल की मियाद रखना चाहिये ।

हमको यह भी सोचना चाहिये कि हमारे देश में नौजवान लड़के और लड़कियां तालीम पाने के लिये, अपनी जिन्दगी को खुशगवार बनाने के लिये, पढ़ लिख कर तरक्की करने की इच्छा करें तो उनके रास्ते में भी यह रुकावट पैदा करता है, लेकिन यह बात भी मैं अपने समाज में देखता हूं कि अगर कोई पढ़ना चाहता है तो वह शादी करना बन्द कर देगा । हमारे समाज में गरीबी ने इस तरीके से अपना कदम जमा कर रखा है कि ८० फी सदी कुनबे

[श्री पी० आर० राव]

जो हैं वह अपने बच्चों को तालीम नहीं दे सकते हैं और घरेलू काम करवाते रहते हैं। उन लोगों के लिये जो कि पढ़े लिखे नहीं हैं और महज शादी के लिये ७ साल के लिये यानी २१ साल की उम्र तक इन्तजार करते रहना, खाली घर में लड़की को बैठा रखना कोई पसन्द नहीं करता।

दूसरा पाइंट यह है कि मामू और फूफी के सम्बन्ध में शादियां नहीं होनी चाहियें। प्राहिबिटेड लिस्ट के तहत यह स्पेशल मैरिज ऐक्ट उनको यह फायदा नहीं दे सकता है। मामू और फूफी के सम्बन्ध में शादी करने के लिये उनको पहले जा कर आपस में शादी कर लेना चाहिये और उस में जो कुछ लेन देन करना हो वह कर लें उसके बाद वह शादी रजिस्टर कराई जा सकती है। वह शादी हिन्दू रिवाज और कस्टम के मुताबिक होगी। इसका मतलब यह है कि जो समाज की तमाम रिवाजें हैं वह होती ही रहनी चाहियें। यह कहने से कि हिन्दू रिवाज के मुताबिक तुम शादी कर लो और बाद में रजिस्ट्री करा लो तो क्या फायदा हुआ। समाज के रिवाज के मुताबिक शादी करने में बहुत खर्चा होता है अगर कोई हिन्दू दस पांच रुपये में अपना विवाह करना चाहे तो वह इस कानून के अन्दर नहीं कर सकता। उसको पहले रिवाज के मुताबिक शादी करनी होगी। बाद को वह रजिस्ट्री मैरेज कर सकता है। यह बेमानी बात है। शादी होने के बाद एक साल तक दोनों पार्टीज अलग अलग रहें और अगर एक साल बाद भी उनका यही खयाल रहे कि हम साथ साथ नहीं रह सकते और वह दोनों मिल कर यह कहें कि हम अपनी जिन्दगी साथ साथ नहीं गुजार सकते तो उस वक्त इसमें तलाक देने का मौका होना चाहिये। लेकिन इस ऐक्ट में जो सेक्शन २७ क्लाज के० (k) में "one year or more" के बाद जो लफ्ज "आर" लिखा है उसकी जगह अगर लफ्ज "एंड" रखा जाय तो जो मैंने कहा है वह हो सकता है। बहुत से मेम्बरों के दिमाग में यह बात है कि हो सकता है कि आज शादी हो और कल ही वह डाइवोर्स कर दे तो यह ठीक नहीं है। मैं भी समझता हूं कि ऐसा नहीं होना चाहिये। लेकिन अगर लफ्ज "आर" की जगह लफ्ज "एंड" रख दिया जाय तो यह हो सकता है कि एक साल अलग अलग रहने के बाद अगर वह मुत्तफिक राय से यह कहें कि हम आइन्दा साथ साथ नहीं रह सकते और हमको तलाक होना चाहिये तो उसको मंजूर करने में कोई हर्ज नहीं होना चाहिये। इसमें मैं यह छोटी सी तरमीम करना चाहता हूं।

डाइवोर्स के बाद जहां नान नफका का सवाल है वहां इसमें लिखा है "आर इज़ नाट लीडिंग ए चेस्ट लाइफ"। इसका जैसे चाहे मतलब निकाला जा सकता है। और मैं समझता हूं कि इसमें कुछ हद तक नाइंसाफी होगी। मैं यह नहीं चाहता कि चाहे औरत कैसी भी जिन्दगी गुजारे उसको ज़रूर नान नफका दिया जाय। यह मैं नहीं चाहता। बल्कि मैं यह चाहता हूं कि जो लिखा है उसके बजाय यह कर दिया जाय कि अगर दूसरे मर्द से शादी कर लेती है, या दूसरे मर्द से ताल्लुक रखती है और बुरी जिन्दगी गुजारती है। ऐसी हालत में कोई भी मर्द नान नफका देना पसन्द नहीं करेगा। तो मैं चाहता हूं कि चेस्ट लाइफ के बजाय प्रास्टीट्यूट या कानकुबाइन ऐसे अल्फाज दर्ज कर दिये जायें तो ठीक होगा। मैं दरखास्त करता हूं कि इस तरमीम को मंजूर कर लिया जाय। मुझे सिर्फ इतना ही कहना है।

11 A.M.

Acharya Kripalani: Mr. Deputy-Speaker, Sir, I listened to your very learned speech that day......

Mr. Deputy-Speaker: Not on this Bill.

Acharya Kripalani:...on a similar Bill. It was a very thoughtful and balanced speech. I was almost converted, but, one thing I did not understand. Sir, you said that you stood for monogamy. That rather surprised me, because a great philosopher, who was also a great student of history, once said from his historical knowledge that mono-theism tends to be fanatical and monogamy tends to be immoral. It generates jeolousy, it generates also an idea of possession in the spouse. Not that I advocate more than one wife and more than one husband at a time—I would go further and I would advocate one wife for good and one husband for good—not that I advocate any other system, having myself married not uncivilly—not criminally, but civilly under the civil law, but I am only stating the opinion of a great philosopher who was also a student of history.

An Hon. Member: Philosophers are cranks.

Acharya Kripalani: So far as the question of marriage is concerned, if we are to treat it scientifically, we must understand the implication of marriage. It is, first of all, a social institution. It is again an economic arrangement. If I may say so, it is also a political arrangement, because future citizens have to be brought into existence or to be eliminated or not to be brought into existence. (*Interruption*). Both there are political and economic questions. Marriage is also a personal question and painfully personal when it becomes emotional. It is also an intellectual question, because if two persons do not hit off intellectually there would be trouble. Apart from that, marriage is considered also a spiritual arrangement. It is further a moral question. It is a biological and also a physical association. It is also a psychological question, which makes it a delicate question. Marriage is also, if I may say so, a question in eugenics. If you are going to have a successful marriage, you will have to take into consideration all these aspects of marriage. Therefore, generally, people do not want to touch what has already been established through the centuries, by experience and trial and error. It is therefore that in social legislation like this we have to be extra careful. It does not matter how much time is spent on this bill. We must give it as much time as all the implications of marriage need. It cannot be passed in haste. The matter is so complicated that whatever experiments have been tried, especially in modern times in the West, have not improved the marriage relationship. Rather I would say that we in India have been carrying on much better than what has been achieved in the West where experiments have been made. As you know as well as I do and most of the Members of the House also know that we in India are a lot of hen-pecked husbands. Why is it so? The credit for this goes to my sisters. They serve us so well that we become helpless, and he will be a brute in India who would dare to ill-treat his wife—not that there are no brutes in India, not that those brutes need not be restrained—but I must say that by and large we have not done badly. If you want to have a perfect marriage—it is said that marriage is at best a lottery—I am sure that a particular couple may be happy married under any system and there may be other couples who would be unhappy married under the most prefect system. It is not the system that matters; it is the men and women that matter. If a couple hits off well, it does not matter whether it is even married or unmarried, though society requires that there should be marriage and—that is very desirable. No systems of marriage will suit certain temperaments and there are such temperaments and even non-marriage will not suit them. It is therefore, that it is said that true marriages are made in Heaven. In heaven social, economic, emotional or political questions do not arise.

Why is it that the Marriage Bill comes so often? It is due to two

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kinds of crazes. One is the craze which the hon. Law Minister mentioned, that is, the craze for uniformity. Why should there be uniformity in the laws of marriage in a country like India, where nothing is uniform? Neither our dress, nor our food, nor our want of food is uniform. In all matters we differ and many people, including our Prime Minister, have recommended variety and this variety enriches our civilisation. While, in Malabar, people are married in one way, we in the North are married in a different way. It does not disturb society; it has not disturbed it in any way. In ancient times, there used to be eight kinds of marriages? Why were there so many kinds of marriage? They were there to suit a variety of the temperaments and also because of legislators' anxiety that there should be no illegimate children. This was as it should have been. I do not see why we should be anxious to have uniformity in this very complicated matter when we have no uniformity in other matters where it would be more beneficial for us to have uniformity. India is a strange land. You find people of all stages of civilisation. In Europe, there is a modern creed of the naked—nudity creed—but it already exists here in India and we had a demonstration of it in the *Kumbh Mela*. In this too we are as modern as the most modern people. Then, see the modes of dress.

Shri R. K. Chaudhuri: Were there any women nudes seen in Kumbh Mela?

Acharya Kripalani: We have among us from the least dressed to the most heavily dressed—the most fashionable ordering their clothes from certain firms in the West. Take only the head dress. In the Punjab they have got a big *morata;* if you come to Delhi, you will find a small *morata;* in the U.P. you will find the Lucknow cap, which will fly off with every gust of breeze; people in Bengal have no cap at all—from heavy dress to no dress. We have them all in India. Then in the matter of food, you have our *dal bhat* and the ancient way of eating from Shri Ramchandra's days served on leaves. Again we have the most modern food, served in up-to-date style and some of our Ministers combine all these sorts of food when they invite. In all things we have such a variety! Why then should we be enamoured of uniformity in a complicated matter like marriage?

There is another thing which, I am afraid, is the basis of all these efforts to reform marriage and that comes from my sisters. They have an idea of equality. Equality, in their vocabulary, means doing the same thing as man does. A man does evil and equality requires that women should do evil. I have an idea that women are more decent in their conduct and in their talk. In their conversation they are more modest. It should be that we men should learn a little more modesty and a little more decency from them; but they think that they will be our equals only if they have less modesty and decency just like men. It is not levelling up, but it is levelling down. If man smokes they hold they will be his equal if they smoke. It should be our (men's) effort to raise the morality of men, but some of our women think that it is better to lower their own standards in order to be equal with us. If we go to offices and work for many hours, they feel that they should do likewise. But what do they get there? They are queens at home but they want to do a typist's or a clerk's job.

Kumari Annie Mascarene: To live.

Acharya Kripalani: Many of them do not do it to live. Anyhow, I am not against it, but by and large you will see in what jobs women are employed! My point is not about the jobs, but that generally it is considered that our (men's) wrongs are their (women's) rights. We tell them that our wrongs should not be their rights.

Some Hon. Members: No.

Acharya Kripalani: If they are to be our equals, let them come down

to our level! But they are our better halves. When the very language we use describes a wife as the better half, why do they want us to be the better halves whom they would immitate. I have no objection if I were the better half, but unfortunately nobody would take me to be that. They are the better halves; let them remain the better halves and let us raise the male conduct and male morality to the female standards. Let us not level down, but let us level up. I would advise my sisters to have a more scientific conception of equality. Equality consists in this that when there is a better person, we try to be his or her equal. Equality does not consist in our lowering ourselves.

This particular Bill is supposed to be very scientific, because, it has nothing to do with convention, with custom or with what existed before. It is something new and I expected that the law proposed will be at least scientific in its character. What is the age-limit prescribed? It is eighteen. A boy does not even get out of his school at that age. Suppose it is 21. I take it that this marriage is arranged by young men themselves and parents have nothing to do with it. Marriage under this bill is not settled by parents. Presumably, such a marriage must be "love" marriage. I do not understand how every man can marry every woman whom he loves; or every woman can marry every man she loves. It will only create confusion. I cannot also see how you can marry only for love. It is absurd. To suppose that one's wife is the paragon of beauty, virtue and intelligence and everything else is an impossibility. Certainly it is permissible to man to love a woman other than his wife, as it is permissible for a woman to love a man other than her husband. But marriage has nothing to do with love. This should not mean that because I love another woman and I consider her superior in certain respects to my wife I should go and marry her. It is absurd. If we were to marry merely for love and every time we were in love I do not know how many marriages we would have to contract!

The provisions of this measure are based upon the idea of love. What love is God alone knows—at least young men do not know. The age of 21 is too inadequate to have a proper conception of love. The age for a love marriage should be 35 at least.

Shri Nambiar: 70 will be better.

Acharya Kripalani: Only then will you know whether you really love. At 21 it is calf love. It happens so many times. It is therefore no sure basis for marriage. It is a sure basis for divorce. And because it is the sure way to divorce, the Law Minister has provided for divorce. Love is supposed to last for ever; that is the idea that we have of love. Because you hold that love is the most flimsy thing, it is the most unreliable thing, it is the most temporary thing, therefore you provide for divorce. And how do you provide for it. In a most unscientific way.

First of all, you say divorce will be granted for idiocy. I can assure you, Sir, that if anybody in the House knows anything about love, love marriage is itself a kind of temporary idiocy. I do not think that people in their senses would take the risk of marrying. It is very great risk, especially for males. A woman gets her freedom when she is married; men lose theirs when they are married. Sir, this subject must be treated seriously and with dignity.

Shri Nambiar: Are you speaking from personal experience?

Acharya Kripalani: Yes, from my personal experience and from yours also, if you are married. If I had known all the consequences of marriage I am sure I would have been wiser!

We here talk of love without understanding what it is. It is said love is blind.

If it were only physically blind it would be something; it is much more

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mentally blind. Physically it produces a kind of hazy and disturbed image, but mentally it is absolutely blind. You know perhaps that great lovers have always been called mad. Their lives have been tragic. I do not know whether our friends from the South have heard of 'Majnu'. In Hindi it is said इस को तो जुनून हो गया है— "he has become like a Majnu." What does it mean? It means he is a mad man. We say love is blind: it is a kind of temporary madness. If a person is mad when he marries you provide for him divorce, but why do you allow him to marry in that state, may I ask the Law Minister? Why do you allow him to marry and then unmarry? Prevention is better than cure. Such people afflicted by temporary madness should not be allowed to marry. There should be no marriage where there is genuine love. I can only logically prove my proposition; I cannot give demonstration, because there are not many people here who are very lovable.

Mr. Deputy-Speaker: The present company is always exempted.

Acharya Kripalani: From that I also am exempted.

Then there is another provision for dissolution of marriage that is for what is called adultery. Sir, the Law Minister seems never to have read any books on psychology. If he had he would have known that this kind of slip in marriage is very common. When you provide for divorce for adultery you know what the implication is? One slip of yours means that you do not desire to live with your wife. It is an absurdity. One may slip on account of circumstances; but this should be no reason for divorce. A slip does not mean that I love my wife less, not necessarily I, but any one of us. If any one however committed a slip in moment of forgetfulness or aberration, it should not be a ground for divorce. What then should it be? It should be habitual unfaithfulness. And who will decide about this habitual unfaithfulness? Not a judge, not a magistrate. If you want to bring divorce in India you are welcome to bring it. But please do not entrust divorce case to law courts. The arrangement should be that an application is made in a court of law and the judge appoints three or four elders of the community, one among them having judicial knowledge to decide the issue. All the proceedings must be conducted by such a board of elders. The other way of dragging our womenfolk in courts is, I. think, degrading and undesirable; it is unscientific. It violates all rules of decency. The people appointed to go in a divorce case should be above the age of 50; they must be experienced people; they must be householders before whom both the parties can freely talk; they should be such people who wield some influence, so that if necessary they can bring the parties together again. I said that a marriage is a temporary aberration. I must also tell you that divorce is a temporary aberration. Bernard Shaw, you will find, ridiculed marriage in play after play. You will again find, Bernard Shaw ridiculing divorce in play after play. You can therefore see why both these matters have got to be regulated by certain experienced people. I would humbly say that even if you are putting a provision for divorce, please do not leave decision to courts of law.

So far as mutual consent is concerned, it is the easiest thing to get consent from the wives in India. We have not provided for their economic equality. We only say that they should have a share in the father's property, as if men become economically independent because they inherit. Men become economically independent because every opportunity, every profession, and trade is open to them. and not because of ancestral wealth. You are emphasising ancestral wealth—whether it goes to daughters or to sons only. Inheritance will not bring about economic equality.

Economic equality will come when all opportunities of education are provided to the women as they are to the men, when all trades and professions are open to women as they are to men... (*An Hon. Member*: Question). I am only laying down the economic conditions under which divorce will work no hardship on women. There should also be equal pay for equal and the same kind of work. All these things should be there. After sometime when women have become really economically independent, you make provision for divorce. Today if you say 'mutual consent', one has only to ill-treat one's wife for a couple of days or weeks and his wife will say: 'For God's sake have my consent'. What is the good of this mutual consent? Then, who should decide divorce cases? Not the judge, he cannot decide whether coercion has been exercised on woman. Some elderly people may sit and together decide whether the consent was properly given or received through constraint and coercion. They would also decide whether the woman divorced is capable of maintaining herself and whether she will not be a burden on society.

Another thing is this. You must make some provision for the children. You have made provision in this Bill for divorce without making provision for the children; it is very strange. Is there any provision for children? ...

An Hon. Member: Yes, there are provisions for legitimate children.

Acharya Kripalani: I thought that there was no provision; lawyers can say whether there is this particular provision or not.

Finally, I would say that it would be better if we had a consolidated Bill and there were different sections for those who are to be specially treated. This is all that I have to say and I must assure you, Sir, that I am very serious about this business of marriage though I am no more in the market and I am also precluded by law.

Mr. Deputy-Speaker: There is still 'divorce'.

Acharya Kripalani: Even if there is divorce, it will not come from my side and if it comes from the other side I can only tell you, at this age of mine, I will feel stranded.

श्रीमती तारकेश्वरी सिन्हा (पटना पूर्व): उपाध्यक्ष महोदय, इस बिल पर बोलने का मेरा कोई विचार नहीं था । लेकिन सोशलिस्ट पार्टी के सब से मुख्य नेता के मुंह से जब मैंने इस बिल के बारे में कुछ बातें सुनीं तो मुझ से बिना बोले नहीं रहा गया । जब उन्होंने बोलना शुरू किया तो मैंने तो यही समझा था कि उन्होंने एक ऐसे फिलासफर को कोट किया है जिसके बारे में वह यही कहेंगे कि उसने कहा है कि मैरिज के इंस्टीट्यूशन को ही एबालिश कर दिया जाय । मुझे उनके खयालात सुन कर हैरानी हो रही थी कि उनके खयालात इतने रिवोल्यूशनरी कैसे हो सकते हैं । पर बाद में जब वह आगे बढ़े तो मुझे मालूम हुआ कि वह आगे बढ़ने के बजाय, ऊपर चढ़ने के बजाय, सीढ़ियों से नीचे उतर रहे हैं । वह आये थे समाज में कुछ क्रान्ति करने के लिये लेकिन जब वह बीच में आये तो जो रास्ता खुला था उसमें भी ताला लगाने को तैयार हो गये । उपाध्यक्ष महोदय, मुझे बहुत ऐतराज है कि ऐसे प्रमुख नेता के मुंह से हम ऐसी बातें सुनें कि औरतें आजकल बराबरी का दावा इसलिये करती हैं कि वे डिसेंसी से नीचे उतरना चाहती हैं और माडेस्टी से नीचे उतरना चाहती हैं । उपाध्यक्ष महोदय, जिस समाज के पुरुषों का ऐसा विश्वास हो जाय कि उस समाज की औरतें माडेस्टी का कत्ले आम करना चाहती हैं और डिसेंसी से नीचे उतरना चाहती हैं उस समाज की नींव कायम रहेगी इसके बारे में मुझे शक ही है । एक जमाना था जब कि हिन्दुस्तान में पुरुषों का स्त्रियों पर और स्त्रियों का पुरुषों पर पूरा विश्वास

[श्रीमती तारकेश्वरी सिन्हा]

था और समाज की नींव इसी पर कायम थी। हमने जो अपनी संस्कृति की नीव रखी थी वह इसी विश्वास पर कायम थी। पहले पहल जब पुरुष और स्त्री का अस्तित्व हुआ तो उन में कोई आपसी सम्बन्ध नहीं था। उनका विकास होने पर उन में एक प्रकार का सम्बन्ध हुआ जिसे आप बायलाजिकल, या शारीरिक या मानसिक सम्बन्ध कह सकते हैं या दैविक संबंध भी कह सकते हैं। इस शारीरिक सम्बन्ध को हम छोटा इसलिये समझने लगे हैं कि आज के समाज में इतनी गन्दगी पैदा हो गई है कि इस दैविक विकास को हम नीचे स्तर पर ले आये हैं और इसीलिये हम शादी विवाह के मामले को ऊंचे उठ कर नहीं देखते। वरना हम तो उस समाज के वंशज हैं कि जिसमें यह विश्वास किया जाता था कि यह जो शारीरिक सम्बन्ध है यह न केवल शारीरिक ही है बल्कि इसका सम्बन्ध परमेश्वर की सृष्टि के साथ है और उसी सम्बन्ध को कायम रखने के लिये यह समाज बना है और यह नियम बने हैं। और उसी सम्बन्ध को कायम रखता हुआ आज से नहीं युगों से स्त्री और पुरुष समाज चला आ रहा है। परन्तु पहले जमाने में पुरुषों का स्त्रियों पर विश्वास था। उपाध्यक्ष महोदय, आप जानते हैं। इसके बारे में आप काफी अच्छा अनुभव रखते हैं और इसके बारे में आपने काफी अध्ययन किया है कि पुरुषों और स्त्रियों को पुराने जमाने में जितनी आजादी थी कि आज के जमाने में समाज इतनी आजादी देने की हिम्मत भी नहीं कर सकता। पर पुराने समय में भी कभी स्त्री समाज ने उस चीज़ को इतना छिछला बनाने की या हल्का बनाने की चेष्टा नहीं की कि समाज के मुंह पर, मनुष्यता के मुंह पर कालिख पोते। पहले स्त्री को मौका था कि वह स्वयंवर करती थी। चालीस या पचास पुरुष इकट्ठे होते और स्त्री से कहा जाता था कि वह स्वयं अपने लिये पति चुने। वह स्वयं पवित्र तरीके से अपने लिये पति चुनती थी। पर आज के समाज में इतनी हिम्मत नहीं है कि वह पचास पुरुषों को सामने कर दे और स्त्री से कहे कि वह अपने लिये उन में से पति वरण कर ले। आज समाज की इतनी हिम्मत हो सकती है ? और मैं नहीं चाहती कि यह हिम्मत समाज में आवे क्योंकि उन रीति रिवाजों से समाज बहुत आगे बढ़ गया है।

दूसरे पुराने जमाने में हमारे यहां और भी एक प्रथा थी। महाभारत और रामायण के पढ़ने वालों को यह बात मालूम है और वह इस से इनकार नहीं कर सकते, मनुस्मृति के पढ़ने वाले इस बात से इन्कार नहीं कर सकते कि पहले के समाज में डाइवोर्स था। आपने कुन्ती का नाम सुना होगा। कुन्ती के सन्तान नहीं होती थी। तो धार्मिक रीति से उनका समागम व्यास मुनि से हुआ चूंकि कुन्ती के पति इस योग्य नहीं थे। अगर आप महाभारत की एक कापी मंगा दें तो मैं आपको यह बता सकती हूं। चूंकि पांडव पाडु रोग से पीड़ित थे और वह इस काबिल नहीं थे कि उनके वंश हो सके और उस समय में वंश का होना एक धार्मिक चीज़ मानी जाती थी, वंश को कायम रखना एक बहुत पवित्र भावना मानी जाती थी, और उसी वंश को कायम करने के लिये, चूंकि पांडव इस काबिल नहीं थे कि उनसे वंश हो, कुन्ती का व्यास मुनि के साथ एक सम्बन्ध किया गया था......

एक माननीय सदस्य : यह गलत है। उनका सूर्य के साथ सम्बन्ध कायम हुआ था।

श्रीमती तारकेश्वरी सिन्हा : यह सही बात है। सूर्य के साथ भी सम्बन्ध कायम हुआ था और श्री व्यास मुनि के साथ भी सम्बन्ध

कायम हुआ था, महाभारत के पढ़न वाले इसे पढ़ लें........(*Interruption*).

Mr. Deputy-Speaker: Let there be no interruptions. The hon. Member has only made a small error, I think. There is nothing wrong in what she says. The Pandavas were born as a result of *niyoga*. It was then accepted under the Hindu Law. To prevent a royal family from going without children, children by some relations or brother-in-law was permitted. That was in the ancient days. Does the hon. Member insist upon a similar provision here?

श्रीमती तारकेश्वरी सिन्हा : उपाध्यक्ष महोदय, मुझे इस बात को कहने के लिये इसलिये मजबूर होना पड़ा कि कुछ लोगों के मुंह से जो मैं ने भाषण सुने हैं उन से मुझे यही लगता है कि लोग ऐसा समझते हैं कि अगर स्पेशल मैरेज बिल पास हो जायेगा तो हमारी संस्कृति का गला घुट जायेगा हमारे समाज का गला घुट जायगा। और यहां की स्त्रियां अपने मुंह में कालिख लगा कर दुनिया के सामने एक ऐसी एग्जाम्पिल और तसवीर पेश करेंगी कि जिससे हम हिन्दुस्तानियों का सिर नीचा हो जायेगा । मुझे ऐतराज है कि ऐसी बातें यहां पर कही गईं जिन का स्पेशल मैरेज बिल से कोई खास ताल्लुक नहीं है। स्पेशल मैरेज बिल समाज के एक बहुत संकुचित हिस्से से ताल्लुक रखता है । मुझे ये बातें यहां पर इसलिये कहनी पड़ीं चूंकि मैंने देखा कि इस मामले में इतनी गर्मी दिखलाई गयी और यह ज़िक्र आया कि औरतें यहां पर मुंह में कालिख लगा कर समाज के ऊपर एक काला धब्बा लगा देंगी। यहां मौका नहीं है कि तलाक के बारे में मैं कुछ कहूं, परन्तु मैं इतना ज़रूर बतला देना चाहती हूं कि मनुस्मृति में जिन बातों पर तलाक देने की व्यवस्था दी गई है, उससे ज्यादा हमारे यहां तलाक देने की बात नहीं कही गई है । मनुस्मृति को उठा कर देख लें जितनी बातें उस में तलाक के बारे में कही गई हैं, मैं कहती हूं कि आज के हिन्दू समाज में वह हिम्मत नहीं है कि इन बातों को आगे रख कर कचहरी के सामने यह कहे कि हम तलाक देने का अधिकार स्वीकार करते हैं.......

श्री नन्द लाल शर्मा (सीकर) : एक भी नहीं ।

Mr. Deputy-Speaker: Order, order. The hon. Member need not be interrupted. She only refers to *Parasara smriti.*

An Hon. Member: She says Manu.

Mr. Deputy-Speaker: Could not the hon. Member be allowed to say that? Possibly some hon. Members might have read some more *smritis*. But if she refers to Manu instead of Parasara, is it such a great fault? What she means is not *Manu smriti* but *Parasara smriti*.

श्रीमती तारकेश्वरी सिन्हा : मैं उपाध्यक्ष महोदय, आपको बतलाना चाहती हूं कि जो लोग इस कानून से इतना डरते हैं वह इसलिये डरते हैं कि हमारी जो पुरानी संस्कृति और एक परम्परा चली आ रही है उसको इस कानून के पास हो जाने से एक धक्का लगेगा । मैं मानती हूं कि परम्परा संस्कार का निर्माण करती है, परन्तु कभी कभी ऐसा भी देखने में आता है कि परम्परा कुसंस्कार का भी निर्माण करती है और आप भली भांति जानते हैं कि कितनी ही परम्परायें आज कुसंस्कार बन गई हैं। यह हम आप और हमारा समाज भली भांति जानता है और जब परम्परा कुसंस्कार बन जाती है, तो देश और समाज का यह कर्तव्य हो जाता है कि उस परम्परा को बदल कर एक नई परम्परा कायम करे और यकीन मानिये कि उस परम्परा से जो संस्कार बनेगा, उसकी जो नीव होगी वह मजबूत होगी।

[श्रीमती तारकेश्वरी सिन्हा]

यह स्पेशल मैरेज बिल जो लाया गया है उसका एक ही मकसद है कि आज जो हमारे यहां एक जाति के लोग दूसरी जाति में शादी नहीं कर सकते, उन के लिये बहुत से बन्धन हैं जैसे एक धर्म के मानने वाले दूसरे धर्म के मानने वाले से शादी नहीं कर सकते। हमारे कृपालानी जी न कहा कि हमें विवाह के मामले में युनीफार्मिटी की ज़रूरत नहीं लेकिन मैं उनको बतलाऊं कि अगर युनीफार्मिटी हमारे सिद्धान्तों में, हमारे सोचने और रहने के ढंग में होती तो यह हिन्दुस्तान और पाकिस्तान का झगड़ा यहां नहीं होता। हिन्दू और मुसलमान जो वर्षों से यहां पर साथ रहते आये हैं चूंकि वह आपस में मिल नहीं सके, अपने हृदयों को मिला नहीं सके और उनकी संस्कृति और खाने पीने और रहने का ढंग जदा जुदा रहा, एक नहीं हो सका, इसलिये हिन्दुस्तान और पाकिस्तान बना और जो खून इसके पीछे बहा उससे अभी तक देश की तर चादर सूख नहीं पाई है। अगर हम यहां हिन्दुस्तान में युनीफार्मिटी कायम नहीं करेंगे तो न जाने यहां अभी कितने और पाकिस्तान बन सकते हैं। आज आप देख रहे हैं कि प्रान्तीयता का द्वेष भाव कितना बढ़ रहा है और आपस में कितना मतभेद विद्यमान है लेकिन यह पंडित जवाहरलाल का ही व्यक्तित्व है जो हर एक चीज़ को आपस में जोड़े हुए हैं परन्तु यह जोड़ अखिर कितने दिनों तक कायम रह सकेगा। अगर आपसी समझौता, मानसिक और नैतिक समझौता लोगों में नहीं होगा और अगर हम ऐसा नहीं कर लेते तो हो सकता है कि यह जोड़ पंडित जी के बाद छिन्न भिन्न हो जाय। इसलिये इस जोड़ को बनाये रखने के लिये हमें सामाजिक और नैतिक एकता कायम करना ज़रूरी है।

मैं उस स्टेट बिहार से आती हूं जहां अभी पंडित जी ने पिछले दिनों सर्वोदय सम्मेलन के अवसर पर कहा था कि बिहार की जो जातीयता की गन्दगी है वह दिल्ली तक पहुंचती है और उसकी गन्ध राष्ट्रपति भवन और मेरे घर तक पहुंचती है। आज बिहार में जो यह जातीयता फैली हुई है इसको मिटाने का सबसे सरल तरीका यही है कि एक जाति के लोग दूसरी जाति में शादी करने लगें। दूसरे प्रदेशों के बारे में मैं नहीं जानती, परन्तु अपने प्रान्त के बारे में कह सकती हूं जहां कि जातीयता की नींव पड़ चुकी है और जिस जातीयता के कारण हमारे समाज का दिल तड़फड़ा रहा है वहां के राज्य को सुगठित बनाने के लिये और वहां के समाज को संगठित करने के लिये यह ज़रूरी है कि एक जाति के लोग दूसरी जाति वालों में विवाह करने लगें और वैसी शादी करने के लिये यह स्पेशल मैरेज बिल एक बहुत बड़ा बरदान बन करके आया है। हमें यह नहीं समझना चाहिये कि अगर यह अधिकार दे दिया जायगा तो औरतें इस कानून और अधिकार का मिस्यूज़ करेंगी। हमारे पुरुषों को, ऐसा मालूम होता है कि हम औरतों पर विश्वास नहीं है, क्योंकि एक तरफ तो वे कहते हैं कि स्त्रियां हमारी बेटर हाफ हैं लेकिन मन में कुछ और सोचते हैं और यह उनका आचरण ठीक उस प्रकार है जैसे बगल में छुरी और मुंह में राम राम। एक ज़बान से तो आप कहते हैं कि औरतें हमारी बेटर हाफ हैं, उन्होंने हमारी मनष्यता को बचाया है, वे हमारी संस्कृति की कर्णधार हैं और दूसरी तरफ अगर वे एक कदम आगे बढ़ना चाहती हैं तो आप उनका रास्ता रोकते हैं और धर्म और संस्कृति के नाम पर उनका गला घोंटते हैं तो मैं कहूंगी कि यह आप बहुत बुरी चीज़ कर रहे हैं। इसलिये मैं पुरुष समाज से अपील करूंगी कि अगर उन में इतनी हिम्मत है तो साफ साफ हमें कहें कि औरतें इस लायक नहीं हैं कि उनको ये अधिकार दिये जायें, उनका हृदय और

अस्तित्व इस लायक नहीं है कि वे समझदारी से काम कर सकें, तो हम उनकी उस साफ दिली को समझ लेंगे और तब हम उसके लिये लड़ेंगे, परन्तु एक तरफ तो उनका हमारे लिये यह कहना कि हमारी सब कुछ तुम हो, तुम देवी हो और शक्ति का अवतार हो लेकिन जब उस शक्ति की देवी को कानून के द्वारा कुछ अधिकार देने की बात आती है और हमारी तरफ से इस बात का आश्वासन दिलाया जाता है कि हमारे द्वारा इस कानून का दुरुपयोग नहीं होगा तो आप कहते हैं कि यह अधिकार देना ठीक नहीं है और इससे हमारी संस्कृति नष्ट हो जायेगी ।

जहां तक तलाक का अधिकार स्त्रियों को देने का सवाल है, मेरी स्टेट में मुझे मालूम है कि बहुत सी कहलाने वाली नीची जातियों में डाइवोर्स की प्रथा प्रचलित है और अगर पति के साथ पत्नी नहीं रह सकती है तो लड़की के मां बाप यह फैसला करते हैं और गांव में जो पंच होते हैं वह यह फैसला करते हैं कि लड़की को पति से अलग कर दिया जाय और उसकी दुबारा शादी हो । मैं आपको बतलाऊं कि मेरे गांव में एक दाई रहती थी, एक दिन वह मेरे पास बड़ी दयनीय अवस्था में आई, उसके बदन में जगह जगह मार के निशान पड़े हुए थे और वह आ कर कहने लगी कि मालकिन अपने यहां मुझे रहने के लिये ठौर दे दीजिये .... *(Interruption).*

Mr. Deputy-Speaker: Order, order. There is so much of disturbance from behind. The hon. Member may speak a little more slowly, and she need not be excited. I would also request hon. Members not to interrupt.

श्रीमती तारकेश्वरी सिन्हा : तो मैं बतला रही थी कि उसके सारे बदन पर फफोले पड़े हुए थे, पति की मार खाने के बाद वह मेरे पास आई और कहने लगी कि मालकिन मैं घर नहीं जाऊंगी, मुझे कम से कम दो तीन दिन यहां पर रहने की जगह दे दो, उस पर मैंने और दूसरे घर की औरतों ने कहा कि तुम ऐसे बेरहम पति के साथ रहती क्यों हो । अपने मां बाप से कह कर अपनी दूसरी शादी क्यों नहीं करवा लेती । वह कहने लगी कि नहीं मालकिन ऐसा मुझे नहीं करना है, अगर वह मारता है तो प्यार भी तो वही करता है. मार की तकलीफ तो दो तीन दिन तक रहेगी, लेकिन प्यार भी तो वह करता है, तो यह हालत है हमारे यहां की औरतों की ।

हमारे यहां की औरतें यह दृष्टान्त पेश करती हैं, उपाध्यक्ष महोदय । यह दृष्टान्त पेश नहीं करतीं कि चूंकि आपने आजादी दी है इसलिये वह इस आजादी का दुरुपयोग करें । जहां पर अनपढ़ स्त्रियों की यह हालत है वहां पर पढ़ी लिखी औरतें क्या इतनी गिरी हुई हैं कि अगर आपका कानून उनको कुछ आजादी देता है तो वह उसका दुरुपयोग करेंगी । ऐसी बात जिस समाज में हो , जिस वर्ग में हो, वह समाज और वह वर्ग अधिक दिनों तक कायम रह सकेगा, इस पर विश्वास नहीं किया जा सकता । इसलिय समाज को सुसगठित बनाने के लिये परस्पर प्रेम की जरूरत है, परस्पर विश्वास की जरूरत है और परस्पर समझौते की जरूरत है । इसलिये इस मामले में, मैं समझती हूं कि हाउस के मेम्बरों को इस बात से ऐतराज नहीं होना चाहिये, खास कर पुरुष समाज को इस बात का ऐतराज नहीं होना चाहिये कि स्पेशल मैरेज बिल पास हो जाने के बाद हम उसका दुरुपयोग करेंगी । यह स्पेशल मैरेज विल तो इसीलिये बनाया गया है कि जहां पर आपसी दुराव हो, जहां लोगों में जातीयता का झगड़ा हो, धार्मिक झगड़ा हो वहां उनको एकता के बन्धन में बांधे। आज हिन्दुस्तान को आगे बढ़ने के लिये किस चीज की सब से ज्यादा जरूरत है ? लोगों को एक बन्धन में बांधने की जरूरत है । नहीं तो दुनिया की कोई

[श्रीमती तारकेश्वरी सिन्हा]

शक्ति, दुनिया का कोई रीति रिवाज, जहां पर कि सब लोग एक दूसरे से आगे बढ़ जाने में मशगूल हैं, या दुनिया का कोई नारा हमें आगे नहीं ले जा सकेगा, इसलिये आज जरूरत है कि हम समाज को एक नये बन्धन में बांधें, समाज के अन्दर एक सामूहिक विकास की सृष्टि करें। और सामूहिक विकास इसी तरह से हो सकता है कि हम हजारों हरिजनों को स्वतंत्रता दें, हम लोग हजारों पिछड़ी जाति के लोगों को उठायें। परन्तु जब तक हम अपनी लड़कियों को उनके पास नहीं देंगे या उनकी लड़कियों को अपने पास नहीं लायेंगे तब तक आपस में दृढ़ता और समझौता नहीं हो सकता, आपस में प्रेम नहीं कायम हो सकता। हमारे कुछ हरिजन भाई इस बात से इन्कार कर रहे थे और कह रहे थे कि हमारे बीच में ऐसी बातें नहीं हैं। लेकिन उनको इसको छिपाने की कोई जरूरत नहीं है। मैं तो इसको बहुत अच्छा समझती हूं कि हमारी पिछड़ी जाति के कहे जाने वाले लोगों में नैतिक मजबूती है, उनके यहां हमारे समाज से ज्यादा विकास हो गया है, उनका समाज ज्यादा सहनशील है। जिस समाज को ऊंची जाति का समाज कहा जाता है उससे नीची जाति का कहा जाने वाला समाज ज्यादा गम्भीर और सहनशील है और हमें उन से सबक सीखना है। उनके लिये यह घबराने की बात नहीं है। यह बहुत अच्छी बात है कि ऊंची जाति के कहे जाने वाले लोगों को तथाकथित नीची जाति के लोगों से सबक सीखना है, हमें उनके पीछे चलना है। वह लोग हमारे पीछे नहीं चल रहे हैं। वह लोग हमें आपस में मेल-जोल बढ़ाने का सबक सिखा रहे हैं। हमको सामाजिक परम्परायें कायम करनी हैं, हर जाति को दूसरी जाति से मिलाना है, और उसका सुलभ तरीका यह है कि आपस में शादी ब्याह हो, अगर यह नहीं होगा तो किसी जाति की उन्नति नहीं हो सकती।

श्री गणपति राम (जिला जौनपुर—पूर्व—रक्षित—अनुसूचित जातियां) : उपाध्यक्ष महोदय, माननीया सदस्या ने कई बार ऊंची जाति तथा नीची जाति का नाम लिया है। इस समय कोई ऊंची या नीची जाति नहीं है। पिछड़ी हुई और प्रोग्रेसिव जातियां जरूर हैं, लेकिन ऊंची और नीची जातियां नहीं हैं।

Mr. Deputy-Speaker: I think the hon. Member's intention was that there is no *neech* or *unch*. On the other hand she meant only that the so-called *unch* must learn a lesson from the so-called *neech*.

श्रीमती तारकेश्वरी सिन्हा : मैंने कहा ही है सोकाल्ड।

Mr. Deputy-Speaker: Every *unch* must learn a lesson from the Harijan community.

श्री पी० एन० राजभोज (शोलापुर—रक्षित—अनसूचित जातियां) : इस शब्द को बीबी जी को वापस लेने के लिये कहिये।

श्रीमती तारकेश्वरी सिन्हा : उपाध्यक्ष महोदय, मैं समझती हूं कि आनरेबुल मेम्बर ने मेरी बात सुनने की कोशिश नहीं की और वह गलतफहमी में पड़े हुये हैं। उन्हें मेरी बातों की गहराई में भी जाने की कोशिश करनी चाहिये। मैंने कहा था कि जो ऊंची कही जाने वाली जातियों के लोग हैं उनको नीची कही जाने वाली जातियों के लोगों से सबक लेना चाहिये। मेरा तो सारा आक्षेप कही जाने वाली ऊंची जाति के लोगों पर है। माननीय सदस्यों को मेरी बातों की गहराई में जाना चाहिये।

अब मैं आपका अधिक समय नहीं लेना चाहती सिर्फ इतनी ही अपील करना चाहती हूं कि पुरुष लोग हमारे ऊपर विश्वास रखें और यह समझें कि हम इस विश्वास का

कभी निरादर नहीं करेंगी। औरतों ने हमेशा ही पुरुष का आदर किया है। शक्ति ने भी जब अवतार लिया था और पूरी जानकारी में ही उन्होंने पुरुष समाज को स्वीकार किया था, उनका विश्वास स्वीकार किया था और उनकी धारणाओं को अपनाया था।

इसलिये में सिर्फ एक छोटी सी चीज मांगती हूं पुरुष समाज से कि हम स्त्रियों पर विश्वास रखें हमें समझें कि हम मनुष्य हैं, हमें समझें कि हम आपकी जिन्दगी का ही एक अंग हैं। अगर वह ऐसा समझेंगे तो हम कभी उनके विरुद्ध खड़ी नहीं होंगी।

इस बिल के सम्बन्ध में हमारे कुछ सदस्यों ने कहा कि उम्र ५० की कर दी जाये, कुछ और ने कहा कि ३५ कर दी जाय, नहीं तो रोज ही डाइवोर्स होगा और रोज शादी होगी, प्रेम का हमारे जीवन में कोई मूल्य नहीं होगा। ऐसी बातें कुछ बरी सी मालूम होती हैं कानों को, अच्छी नहीं मालूम होती हैं। इनसे हमारा हृदय दुखता है, स्त्रियों का हृदय दुखता है ऐसी बातों को सुन कर। इन शब्दों के साथ मैं इस बिल का समर्थन करती हूं।

Shrimati Renu Chakravartty (Basirhat): Sir, we have heard two very agitated speeches, one coming from the age group above 50, and the other coming from the age group below 30. I think both these two are ages in which one tends to become agitated, one thinking of what one has lost and the other thinking of what is before him and which may be lost. I happen to come in the age group in between these two. Therefore, Sir, I can speak with a little more knowledge, a little more balance and impartiality. Not only that; I happen to be one of those who have been elected in spite of the attack of the oppositionists of the Hindu Code Bill. The one point they agitated against me was that whenever I was returned to Parliament, I would fight for Hindu Code Bill. I do not deny that. Therefore, I feel that I have a right to speak very clearly and in unequivocal terms about what I think of this piecemeal legislation, the Special Marriage Bill.

Then, there is another point, and that I think is the most important one. I happen to have been married under Act III of 1872. I have been married for nearly 14 years and still the clauses about which my friends get so agitated, have not been used. Therefore, I think, it is not necessary that as soon as you allow it to the woman—as long as you allow it to the man or society it is all right—that woman is going to run to the court for divorce. It is such a demeaning thing to see men getting up and talking in this manner. Have they no idea about this? Do not they think that they themselves can create an atmosphere or create a hold upon their partners in life, that they will never go to the divorce court? It is like this: that you want a person to be a *sati* by locking her up and putting a big *tala* on the door of your house before you leave it. In that manner you want to ensure chastity? That is the chastity of a prisoner and not the chastity which comes as a result of mutual trust, mutual honour and mutual respect. It is this about which my male friends are so afraid of, that once you give the right of divorce, then they will have to hang themselves. That is the real psychological reason behind it. But, I am sure that the majority of men are not like that and that is why we are (also quite sure that giving equal rights in marriage does not mean our going down the ladder, but pulling you up the ladder with us.

Sir, I feel very strongly that we must look upon this Bill not as a loving licence but something that will help us to legislate for happiness both at home and in society. It is true when one enters marriage one should enter it with a full sense of responsibility both towards oneself and his partner and towards the children that one is hoping to bring into the world as well as society. Well,

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I am not going into a long dissertation on marriage as already my friend before me Acharya Kriplani has done. But, it is true that things do not always get on well. There are circumstances, even if you get married at 35, about which you might not have thought of before. Therefore, there may be circumstances during which it is much better for all concerned to part with honour and with understanding. That is why we say that we demand divorce, not because we want to use it on every occasion, but because we want that each should be able to try and understand the other; each should be able to respect the other and should be able to pass their life on understanding, on freedom and not on force. It is with this attitude that I speak on certain points in this Bill.

One of my previous speakers talked about society—I wish he had talked about ladies—I would prefer to say women, because it is more homely—about the position of women in society. What is the position? What is the status of 99 per cent. of them? Think of that.

An Hon. Member: Lakshmi.

Shrimati Renu Chakravartty: You have put it on a pedestal and you may sit there and try to get some *punya* for the next world; but not in actual practice. when it comes to women.

We know in our society a number of women who have been abandoned, others who have suffered and suffered indescribably and silently. We know of cases where young girls who, for no fault of theirs, almost in every case, have been abandoned after marriage by the choice of their parents. They have no means of earning. They have to lead all their lives upon the sweet will of either the brother or some other relations. We need not dilate on this point. Let us think of the society in which we live. Women discarded, women dependent, women humiliated, that is the type of society, that is the type of women for whom we have to legislate: not for aberrations in society who want to have the right of divorce in order that they may go in for more flirtations. Aberrations are always there; we do not legislate for them. In every country there are such people. Do you want to say that the majority of women in India are such that they may be utilising these clauses in order to bring down the honour, the high name, which women in India have established? I would ask you to answer that first. I do not think that anybody except my hon. friend Shri R. K. Chaudhuri would dare say that.

Shri R. K. Chaudhuri: May I know why I am so much in the hon. Member's thoughts? I did not utter a word even.

Shrimati Renu Chakravartty: I say that because my hon. friend Shri R. K. Chaudhuri always gets excited whenever the word "women" is uttered. It is because of this that I want to take up this question of mutual consent which has created such a furore in this country.

Marriage must be based on understanding. It is also true that one must try and give a trial to marriage. If the two people cannot carry on, it is better to part, when you think of the poisoned atmosphere of home life. I have seen families where because of certain circumstances, because this legal right is not there, more so because she has no right of economic independence, she cannot go away. She can be kicked; she cannot go away. She can be humiliated; she cannot go away. She may have to live a life of hell; she cannot go away. It is in these circumstances that mutual consent is something which is better than bringing in clauses like adultery. What is happening in the British courts? You have to come and prove that he spent a night in a

hotel. Whether it is true or false, all this dirty linen you have to come and wash in public.

[PANDIT THAKUR DAS BHARGAVA *in the Chair*]

All that is essential in order to get a divorce. If it is a question of mutual consent, it is something which two people decide that they cannot get on together. Do we do this in a huff? No. There should be a time-limit when we should try for reconciliation. I think there may be some 'and' or 'or' which has been misplaced and is therefore rather confusing. In any case, nobody can entertain a petition for divorce before three years have run out. Do you mean to say that persons who have lived together for three or four years will suddenly give their consent and say we are going away? Especially. I can speak for women. Women love their children; women stick to their homes and children. I do not want to talk of the exceptions. There may be one or two. There are on both sides. I talk of the normal run of human beings. Especially the woman is a home builder, is a conservative person. She is not a person to rush to break up all that she holds near and dear. Therefore, this question of mutual consent is an important one. On top of that, there is the other clause which says a couple have to live separately for a year and after that they have to agree to continue not to live together, and that becomes a cause for divorce. Therefore, I would like to urge that the whole thing be regarded dispassionately, fully and also with a view to examining it in the light of experience which has been gained in the divorce proceedings of other countries. Many countries have divorce proceedings which have been hedged in with a hundred and one clauses to avoid easy divorce. Is that better or is it better to allow them to part company, based on mutual consent, after efforts at reconciliation, with honour and not embittering relations further?

12 NOON

The second point which I should like to mention is the question of age-limit. I did not attend the last few days of the Select Committee, but I do know that in the earlier days we discussed this threadbare and we had said specifically that we want the age-limit to be eighteen. Why is it? Because we legislate for our country. We do not legislate for any other country. In our country we do get married at the ages of 12, 13 and 14 although we have the Sarda Act. At the age of sixteen one is considered in the villages to be grown up. At eighteen, a girl is considered to be perfectly mature. Not only that. If a boy can manage property, he is supposed to have become a major at the age of eighteen. Certainly we should allow them the right of marriage at the age of 18. Do we think that only the old people have the monopoly of all wisdom? If young people want to marry, certainly I as a mother would advise and try and persuade them; if at the end of the persuation they still insist, what right have I to prevent? If the marriage is successful, everything will be all right. If the marriage is not successful, well, then that is all to the ill, but even if I choose my son's wife the same difficulty must be there. So, this chance has to be taken. Therefore, it is only on the relationship, friendship, comradeship, affection, trust and so on which exist between the parents and the children that we can advise our children to make the best marriages—not by force, and I think that is the attitude we should adopt.

I feel very happy about this clause about the legitimacy of the children. This is a thing that I have always wanted. Why should the sins of the parents be visited upon the children? We have seen what has happened to the children for no fault of their own. My hon. friend Mr. Tek Chand, when he speaks, speaks with all the vehemence at his command that religion will end when we allow legitimacy for the children. I say give as hard a punishment as you like to the woman and the man, but you have no right to make the children suffer for the

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sins of their parents. The Republic of India must make a new departure in this respect. Our children, when they are born in wedlock or out of wedlock, should not be made to suffer. The parents can suffer. You can legislate for them, but the children must have everything which our State can give them in our society. My friends from the Hindu Mahasabha will certainly have a lot to say about it, but I feel very strongly about it.

There is one clause I would like the House to consider. That is the question of the restitution of conjugal rights. I feel that the time has come when such a demeaning power of the courts must be taken away. I have put before the House the attitude I take towards marriage and therefore I feel that when two people have separated for whatever reasons, we can try for reconciliation, but no court has a right to force restitution of conjugal rights, whether it is by the man or woman does not matter. In our society, as it exists, it is quite true that it may be the man or the woman, who may demand the right to restitution of conjugal rights. But it is generally the other way round, and the woman is forced, whether she likes it or not, to be restored to her husband. That is why I think this is a clause which goes against the right of equality which has been denied by my hon. friend Acharya Kripalani. But that is an equal right which we want, and this kind of thing is humiliating.

Acharya Kripalani: May I correct the hon. Member here. I never denied the spirit of equality. I said levelling up and not levelling down. I was saying that of the morals of the men community, and not of the women community.

Shrimati Renu Chakravartty: Therefore, I would urge that this clause dealing with the restitution of conjugal rights should be deleted, and only the clauses dealing with judicial separation and divorce should remain. Those are the two rights that we want, and they should remain, and not this question of restoration of conjugal rights.

Now, I come to the question of prohibited degrees of relationship. As far as I remember, the general sentiment in the Joint Select Committee was this. We do not know what is going to be the fate of the Hindu Marriage and Divorce Bill. I have already heard some speakers who feel, let us give our support to this Bill, so that we shall have our consciences left clear to oppose the Hindu Marriage and Divorce Bill. We do not know what is going to happen. Past experience makes us fear for the fate of that Bill. But in any case, we would feel very happy, if we could liberalise the clauses of this Bill so that it may include as many people as possible, and its clauses may benefit as many sections of the people as possible. In order to encourage people to make use of the provisions of this Bill, in as large numbers as possible, we should take away all the clauses which would frighten them away. It is with that attitude that I feel that we should allow not only the registration of any marriages that have already taken place, but even in the first case, if the marriage was within prohibited degrees of relationship, we should allow it, if it was under customary law. There is nothing illogical about it. That is necessary, because we are in a period of transition. In that period of transition, we have to fight against age-old prejudices. There is the new coming up. There is the battle between the old and the new; in that we have to take a step in which sometimes, we will have to compromise. At the same time, in spite of certain illogicalities, that will be a step in the right direction. Therefore, I would urge, that even in the first case, it should be allowed to be registered; though many of us, for reasons of eugenics would really like prohibited degrees of relationship to be excepted, still there are thousands and

millions of people who are guided by customary law. I believe we should not force this kind of a thing on them. Many of us do stand for a uniform civil code of marriage, and we do want a uniform territorial code of marriage. That is why we welcome this Bill. We would also like its provisions to be so liberalized—though it is of a permissive nature—as to encourage as large numbers of people as possible to come and take advantage of the provisions of this legislation.

There are two or three small things on which I would like to say a word, before I end. The first is about the three year period that should elapse, before any proceedings for divorce can be started. It is true that we have to give a certain period. But we must also remember that in certain cases, it becomes almost impossible for the couple to live together. Therefore, I would say that even at this stage, that clause could be omitted entirely. The House may be up in arms when I say that. But I would only say, leave it to the goodwill and the good sense of the people who are most intimately connected with it. If, however, the House does not agree to that, I would say, at least reduce that period, so that it does not come as a great hardship to those who desire to finish with the marriage.

Lastly, I come to the provision containing the term 'incurably of unsound mind'. This question of proving that a person is incurably of unsound mind is a very difficult thing. I am not a doctor, but as far as I know, when there are alternate periods of sanity and insanity, who can predict that a person is incurably of unsound mind?

Today this is a thing that we have to consider. We have to consider whether, when you force a person to monogamy—whether it is man or woman—you should not give the right of divorce. Therefore, when you accept that position of monogamy, you have also to accept the various positions in which ill-health and diseases of an extreme and incurable character, unsound mind etc. exist. We have to consider whether the provision regarding that has to be liberalised or not.

Lastly, I come to the question of appeals. I would urge that something should be put in the Bill whereby a time-limit should be set to appeals, that the court should act and finish with these divorce proceedings within six months of the time and in the case of appeals also, there should not be a further period of more than six months. In this way, I feel that we should be able to bring about a certain amount of change in the existing system and bring about a greater equality, not to one section, the male section, alone, but also to the women, without the man demeaning the woman or the woman demeaning the man, both together hand in hand building up a happy home life to ensure the happiness of the children and the welfare of society.

Shri Tek Chand (Ambala-Simla): I wish to approach this subject dispassionately, not on an emotional plane, not on a celestial plane, but on a mundane and terrestrial plane. I do not wish to assume the approach of an idolatrous devotee wedded to a particular course, whether it is reasonable or unreasonable. At the same time, I wish to avoid the attitude of a destructive iconoclast, that everything about a Bill is wrong or that everything about a Bill is right. With reason, with sanity, with logic as the guiding principles, this Bill deserves to be examined. I am willing to concede that this Bill contains certain provisions that are unexceptionable, whereas other provisions are open to very serious objection. Therefore, I am not one of those who insist that it must be either accepted wholly as it is or rejected wholly as it is.

In the exuberance of their feelings, the last two speakers, have said many things, but they did not examine the provisions of the Bill, with which we are going to be confronted, the moment it becomes the law of the land. I am willing to pay

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homage to this principle, and to this extent, that in a country there should be a provision of law whereby it is possible for one citizen to marry another citizen, irrespective of their religious faiths or beliefs. But once I concede that, that does not mean that the Bill contains all the provisions that are to the best advantage. In particular, I am not enamoured of clause 4: it is too rigid in some parts and too liberal in others. So far as the sample of rigidity of the Bill is concerned, I wish to invite attention to clause 4(e). The Bill insists that only those persons can avail themselves of the provisions who both happen to be citizens of this country. It seems to have been lost sight of that apart from Indian nationals or citizens of this country, there are millions of people of Indian origin but not nationals of this country. I am referring to Indians, let us say, in British Guiana, Ceylon, Canada and Trinidad and in so many other countries. I put an illustration before the hon. Law Minister and let him solve the puzzle if he can, under this Bill. I respectfully submit, he cannot. You forbid an Indian citizen in Brazil to marry; under this law, an Indian in Brazil who is not a citizen, because you have taken away the power from your consular offices of celebrating such a marriage and of giving validity to it. In contrast, I wish to cite the English Act called the Foreign Marriage Act which provides that every British consul outside England is authorised to celebrate a marriage where one of the two happens to be a British subject. In other words, it is open for a British consul, whether in this country or outside this country—that is, outside England—to celebrate a marriage between a British subject and a non-British subject. Not only that. The Indian Foreign Marriage Act has given sanction to the provisions of the British Foreign Marriage Act, and that has been adapted even after coming into force of the Constitution of India. That British Act has been recognised, by our Act, but we are chary of empowering our consulars...

Shri Biswas: We shall recognise that when we have a Foreign Marriage Act corresponding to the English Foreign Marriage Act. That is now under consideration. We shall make that provision in that Act.

Shri Tek Chand: Since the hon. Law Minister has made some sort of promise that a similar enactment is in the offing,—it is in contemplation —I leave it at that, but till it comes, I wish to tell him that there is an important lacuna which is almost—pardon me if I say so—a blemish. So long as we are recognising the British Foreign Marriage Act and we are not giving similar powers to our consulars, it is a stigma which I hope will soon be obliterated.

Shri Biswas: I had pointed out in the Joint Select Committee that such a law was in contemplation.

Shri Tek Chand: So far as other provisions of the Bill are concerned, clause 4, to my mind, is one of the basic clauses. It says that a marriage cannot be performed if there are certain impediments, namely, there is in existence a spouse or one of the parties is an idiot or a lunatic, or the parties have not completed the age of 21 or they are within the prohibited degree of relationship. So far as they go, I have no objection. But there should also be incorporated a provision, at this stage and not later, that if it is proved to the satisfaction of the Marriage Officer that the proposed marriage is intended to be performed either because of some error, mistake, or because of coercion, misrepresentation, duress or fraud,—if he comes to that conclusion, then he should be empowered to refuse to celebrate such a marriage. It is a well-known fact, and these practices are known not only to people in this country but also in England, that marriages have been performed

under duress, as a result of blackmail, as a result of fraud perpetrated and in consequence of certain serious errors, whether the errors are on grounds of what they say, *personae, conditions, qualitatis* or *fortunae;* that is to say, all sorts of mistakes can be there. A person may promise one thing and it transpires to be a different thing. Supposing for instance, a person demands or a girl represents that she is a *virgo intacta,* she is an absolute virgin and it transpires that she is a woman who has been hiring out her body, will it not be open to him to say, 'I was gulled and therefore there was a genuine error'? This is one of the instances. Several instances have occurred in the reported case law in England. Therefore, these elements ought to be incorporated so far as clause 4 is concerned.

Shri Biswas: What the hon. Member suggests is that not merely when an objection is raised, but ordinarily, in the normal course even, where no objection is raised, the Marriage Officer must make an enquiry and satisfy himself on this point. Is that his suggestion?

Shri Tek Chand: Certainly, not. May I elaborate this point? The most objectionable feature is the objection clause itself, the only objections, that a parent can make before a Marriage Officer are confined only to those points which are mentioned in clause 4. Therefore, supposing a parent comes to know that a fraud is being perpetrated on his child, or his child is being victimised as a result of some blackmail or coercion, even if he were to knock at the door of the Marriage Officer and tell him. 'Look here, I am in a position to demonstrate that she is being a victim of fraud, coercion, duress or genuine mistake,' the Marriage Officer will turn round and say, 'I know that may be so, but the law has made me powerless to make enquiries with respect to that particular matter. If you prove that the couple are within the prohibited degrees of relationship or any one of them is of non-age or any one of them is an idiot, I am willing to make an enquiry, but the moment you call upon me to say that one of them is being subjected to this marriage under pressure, under undue influence, because of some misrepresentation, because of certain duress, because of extortion, because of blackmail, they may be very genuine grounds, I may be willing to believe them, but I am helpless to give any succour to you'.

Shri Venkataraman: May I just ask one question? The persons who are going to be married under this Bill are over 21 years of age. Does the hon. Member suggest that persons over the age of 21 years are subjected to fraud, coercion......

Shri Algu Rai Shastri (Azamgarh Distt.—East *cum* Ballia Distt.—West): Temptations too, temptations of office.

Shri Venkataraman: If it is the suggestion that people over 21 years of age are going to be subjected to fraud, coercion and all that and that provision should be made for that, then the entire contract law should also have to be amended and so many other laws will have to be amended.

Shri Tek Chand: The ingenuity, and commonsense of the hon. Member opposing me is remarkable. He seems to be a young man of great experience. But, I must confess he is completely innocent of the working of the matrimonial laws in other countries and of what is being done. Innocence may be a very good quality but innocence of the bitter experience of the world is a very sad trait. He has got to take any elementary book on the law of divorce of England or America or it can be any book on Indian law and under the appropriate chapter he will find cited any number of instances of people who were imposed upon, where a woman has been imposed upon or where man has been imposed upon. So far as my country is concerned, I am aware at least of one

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case where a particular woman who was employed as one of the decoys of a gang of extorters who had made it a practice to offer her as a very reputable young widow of excellent antecedents and she had repeatedly robbed a number of widowers, with whom she underwent forms of marriage.

Shri Venkataraman: It is provided under clause 25,—relief for voidable marriages,—that if a marriage was performed under fraud or coercion, the marriage can be declared void.

Shri C. D. Pande: But that will be too late.

Shri Tek Chand: I am grateful to him. In other words, the argument that is being advanced on the other side is, let the mischief be done; let the innocent girl be impregnated, let her be deflowered and after the honour of the family is defiled, the honour of the woman is defiled and she has been dishonoured, deflowered, violated and ravaged, then go to a court of law and say, 'I am going to prove this that and all the rest' and derive such solace as you can after the mischief has been done. This is a mighty argument advanced by my learned colleague on the other side.

Shri Biswas: If I may interrupt the hon. Member for a minute, I want to understand exactly what he means. The question of coercion or fraud can only arise when the parties are below the age of 18 or 21; in other words, where the law provides that, in order that the parties may contract a marriage, they must obtain the consent of their parents or guardians. I do not quite understand what is it that will be affected by coercion or fraud? If there is no question of consent, what are the questions which the marriage officer must enquire into at this stage? In what connection does the question of fraud or coercion arise if no question of consent is there?

Shri Tek Chand: The sad thing is that the hon. Law Minister does not quite understand.

Shri Biswas: I said that I did not quite understand and I want exactly to understand the point.

Shri Tek Chand: The moment I rise to amplify the point, up comes one interruptor after another. Please wait and you will have an effective reply from me.

If people are above the age of 21, they are incapable of being duped, they are incapable of being defrauded, and they are incapable of committing any errors, and become infallible. This is an argument which is most fallacious. What may happen is this. Supposing there is a young girl and the man says—he is a bit of a bully—"I have some improper letters that you have exchanged with another young fellow; I propose to disclose. I propose to defame, I propose to blackmail you; the condition is that either you marry me or you will be exposed and defamed and you will lose all your reputation." But the girl, not knowing what to do between the proverbial Scylla and Charybdis, submits and says "All right; do not expose me to the ridicule of my people; do not let my parents know about it; I will bow to the inevitable; let us run away and let the thing be over." This is the sort of extortion, this is the sort of duress and this is the sort of fraud.

Shri Biswas: I am not so simple as my friend to imagine that in such a case the Marriage Officer will have no materials before him on which he can go into the question.

Shri Tek Chand: I am grateful to him. Sir. Let the hon. Law Minister, for a minute, put himself into the chair of the Marriage Officer. I bring this case to him and I, as a parent, allege perpetration of fraud or intimidation and all the other things I just mentioned. He will say "The only power given to me as

Marriage Officer is to entertain those objections only which are covered by section 4. If this objection falls under section 4, I will interfere, but if it does not, I am powerless. It is not every wrong that has a remedy and it is not every kind of infraction of legal right that can be protected." The answer of the Law Minister as a Marriage Officer will be: "I sympathise with you. I believe what you say, but the law has not fortified me with that jurisdiction and law has not given me that power." All that I ask you is: "Give your Marriage Officer that power." If a parent goes with the allegation that his daughter is being tricked, that his daughter is being duped or blackmailed, and asks the Marriage Officer to please look into his allegation, "If I succeed, then let the marriage be not performed; if I lose, let the marriage be performed." You are not willing to empower your own Marriage Officer with that limited power. My learned friend quite rightly said "You have got the other remedy, that is, have a decree of annulment that is provided by this law."

Dr. Jaisoorya: May I put a question for clarification? In the case of a parent alleging that so and so is duping or blackmailing his daughter, he can go to a police officer and get him arrested.

Shri Tek Chand: I have to learn my law from the learned doctor of medicine who is going to get the man arrested on a mere allegation of fraud, trick etc. Does he know that it is not a cognizable offence? A little knowledge is a dangerous thing.

Mr. Chairman: The hon. Member has already taken twenty minutes on this one matter. I would request him to be very brief.

श्री अलगूराय शास्त्री (ज़िला आजमगढ़—पूर्व व जिला बलिया—पश्चिम): श्रीमान् जी, जब जब यह कोई पाइंट कहना चाहते हैं तो उधर से कोई न कोई इंटरप्ट करने खड़ा हो जाता है और वह पाइंट इल्यूसिडेट नहीं हो पाता और हम लोग उनकी बात को सुन नहीं पाते । दूसरे पक्ष की तरफ से जो बातें कही गई हैं वेभ्रम में डालने वाली हैं । उन पर जो यह प्रकाश डालना चाहते हैं उसको सुनने दिया जाय । हो सकता है कि जो वह कहना चाहते हैं उससे कुछ लोक सेवा हो सके और जो दूसरी तरफ से कुसेवा की जा रही है उसे रोका जा सके ।

सभापती महोदय : अभी जो शास्त्री जी ने फरमाया मैं उन से अर्ज करूंगा कि आनरेबिल मेम्बर साहब ने सिलेक्ट कमेटी की रिपोर्ट के साथ एक बड़ा लम्बा चौड़ा मिनट आफ डिसेंट लगाया है और यह सारी बातें जो वह फरमा रहे हैं उसमें दर्ज हैं । यह बहुत बहस तलब मामला है और बड़ा गहरा मामला है । लेकिन इसके ऊपर जितनी बहस हो रही है उससे ज्यादा इस हाउस में होना मुमकिन नहीं है ।

श्री अलगूरायशास्त्री : ठीक है ।

Shri Tek Chand: I crave your indulgence for a few minutes more. This is a very important matter. As I started by saying I am not committed or wedded to one view or the other. I only want to analyse the Bill and if you only permit me I will be in a position to demonstrate some of the serious flaws for them to rectify.

Now, Sir, taking the cue from your suggestion that I should be brief, I run to the next point, re-objections. The so-called objections are the most objectionable feature of this measure. Not only are objections restricted, but what would happen is that an intending spouse, if any of them has residence for fourteen days only in one particular locality the Marriage Officer of that locality has jurisdiction. Therefore a couple, say from the Punjab or Himachal Pradesh has only to run away to Travancore-Cochin, or Assam or to some farthest

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corner of the country. and fourteen days' stay of either of them will confer jurisdiction on the Marriage Officer. What happens? He is supposed to publish a notice. You have perpetrated fraud on the word "publish". The word publish means making known to the public and the form of publication you have prescribed is that he has only got to fix a notice in one of musty corners of his room—that is supposed to be a notice to the parents, to the prospective objectors and to everybody. I begged and implored of the Select Commitee: "Pray, change the language of your Schedule II; let notice be given by Registered Post to the parents, if any." No, they would not listen. I begged of them: "Let it be published in a newspaper:" They scoffed at me and said "No". Then I said: "Let the parents come to know" and the only thing that they were willing to concede to me was this: "All right, a copy of this notice will go to the Marriage Officer of the area in which is the permanent residence of those people." Thirty days are fixed as the period of objection. but thirty days to be counted from which date ? Not from the date when the notice is published in the office of the Marriage Officer of the area in which is the permanent residence of those people, but under clause 6 (2), where it is published by affixing it in the place of the office of the Marriage Officer where the marriage will be celebrated. The result will be that the objectors will not have come to know that there is such an intended marriage and the period of thirty days will expire.

Supposing the objector comes to know, let us say, within thirty days and under the law thirty days are given to substantiate the objections. If you have got substantial objections and thirty days expire, within which you are not able to establish them, your objections will be ruled out and the marriage in spite of the fact that it is within prohibited degrees will be performed. Then, if the objector's contention is accepted you give a right of appeal to either of the intending spouses. If the objector's contention is rejected, he has not even been given a right of appeal. Is it not conspiracy of law with a view to scoff at virtue. After all if you were to load the dice against the objector, howsoever honest he may be, it is better that you say that no objection will be heard. At every stage there is a brake applied, at every stage there is difficulty, a hurdle in the path of a parent, or objector. His objection somehow is sought to be dodged and defeated. If his objections are dismissed—if I mistake not—a thousand rupees can be imposed by way of fine which is to be given away to the offender. Therefore, this aspect of the law deserves very careful revision...

Mr. Chairman: Order, order. I have already told the hon. Member that he has taken 20 to 25 minutes. So far as the points raised are concerned, I will be the last person to say that they are not very important; they are very important but they have all been mentioned in detail in his minute of dissent also. Subsequently, when we go to the clause by clause consideration, even then there will be amendments moved in respect of them. I will request the hon. Member to utilise the few miuntes that are before him—I do not propose to allow him more than half an hour—in expounding the points which he had not already indicated in the minute of dissent. The note is there and so forcefully written. It must have been read by all the hon. Members already. So. I would suggest to him that he might utilise his time in regard to matters of which are not mentioned there.

Shri Tek Chand: I am grateful to you and I accept your suggestion. I come to clause 27—divorce. Whether divorce should be allowed or should not be allowed is a matter of individual opinion and I am willing to criticise this Bill on the assumption that the divorce clause may

stay. I have my serious objection to sub-clause (c) of clause 27. If a person is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code, a petition for divorce may be presented. Let us examine its ramifications. If an innocent husband finds his wife under suspicious circumstances or in *flagrente dilecto* with her paramour and he goes and gives her a severe beating and also causes severe injuries on the person of the paramour in order to protect his honour and if he is sentenced for seven years, then that act in turn becomes a justification for the guilty wife to divorce the husband in order to have a real marriage with her paramour.

An Hon. Member: If there is a remission and you come home in the middle, then there is no wife.

Shri Venkataraman : You deserve it if you beat your wife.

Shri Tek Chand: The difficulty is that not only no endeavour is made to know my point of view whatever it might be but a little twist is given to my language even. What I said was this. Supposing the husband causes grievous injuries on the person of the paramour when he finds him in compromising position with his wife and gets seven years for that according to your law, that becomes a good ground for the wife to divorce the husband so that she can carry on with her paramour. Is it not a conspiracy of this law with the paramour as against the husband? You can take the case of political offences with which my hon. friend may be familiar. If a political worker for some political offence gets seven years, he loses not only his liberty but his wife also because that again will be a ground for divorce when the husband gets an imprisonment for seven years.

Then, may I take the other clause—clause 28? It says that no petition for divorce will be entertained for the first three years. I am not enamoured of divorce; it is not that. But I am not agreeable to this; if you are going to permit divorce, then why wait for three years, especially in those cases of disgraceful conduct of one of the spouses? If one spouse persists in behaving disgracefully or in a disgusting manner, you cannot tell the other to be a witness of this for three long years and then to knock at the door of the court and then possibly get a divorce. At least in cases where the matrimonial offence is of the nature of adultery, it is not a case of three years long wait to permit him or her to commit adultery before relief from the divorce court becomes available. In the case of leprosy, sickness, disease, etc. it is a different matter. Even in the case of desertion it is a different matter. But so far as the offence of adultery by any of the spouses is concerned and it remains unpardoned, unforgiven, there is no reason why you should subject the innocent spouse to the agony, suspense and misery of three long years wait and let his disgrace continue in the meantime.

The sands of time are fast running against me. I wish to say a word about the legitimacy of children. It has been argued on an innocent plane: "Why should they carry the stigma of illegitimacy? Therefore, whenever a child is born, whether within wedlock or outside wedlock, in incest, within prohibited degree, it must be legitimate". Its effect will be the reverse of what they think. The result will be that for the sake of one's own children for the sake of their reputation, future, parents will be willing to undergo any deprivations, any sacrifices. But if any children, whether born within wedlock or outside wedlock, out of incestuous connection like that of brother and sister, or through any other concubinal connection non-marital connection, if the children are going to be legitimate, then the question arises what is the check, what is the brake, what is there to prevent people from not going in

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these directions? The attitude will be, "it is all right", marriage or no marriage, wedlock or no wedlock, the children will be accepted, as lawful.

Take another instance. This Bill seems to have been drafted in haste, this particular clause. Let us assume that a woman who is already confined or already pregnant by some one undergoes a ceremony of marriage with X. X has not impregnated her. X is not the father of the child-to-be. Such children born will be legitimate. But who are the parents? The mother, of course, is knowable. But how can you inflict parent-hood, on the ground of legitimacy, on a father who is not the father of the child?

Then again A marries a woman according to law. He has not a child. The wife dies. He then keeps a concubine. From the concubine he has a child. Are these two children to be at par. No doubt they are the children of A.

Therefore, in matters of legitimacy of children my suggestion is, do not bastardise children of all sorts of relationships outside wedlock, but bastardise only those within a limited, glaring degree where the relationship is incestuous or the like.

Therefore this Bill requires considerable improvement.

Lastly, while resuming my seat I wish to say this. A good bit has been said that marriage is a contract. Please remember marriage is not only a contract. Marriage is a status, marriage is an institution, and marriage is one of the regulatory modes for regulating biological urges. Therefore it is not, merely that A and B want to marry, let them marry, A and B want to divorce. let them divorce. Children are involved. Society is involved. Therefore, I would counsel in all humility, examine your clauses *de novo*, bit by bit, and then come to some sane, reasonable, logical conclusion bearing in mind all the weighty matters that are worthy of your consideration.

Shri Dabhi: Sir, while rising to support the motion for consideraton of this Bill I would welcome the change made by the Council of States with regard to the marriageable age of the parties under the Bill. Sir, we know that the Council of States has amended clause 4 by which the marriageable age of the parties has been raised from 18 to 21 irrespective of the consent of their parents or guardian. I know that several persons inside and outside this House have objected to this raising of the marriageable age of the parties, but I on my part heartily support this change made by our elders in clause 4. I do not understand why even people who call themselves progressive are in so much haste of marrying their children at an early age. We must also remember that the marriage which will be taking place under this Bill would be between persons belonging to different communities and religion and the surroundings, customs and traditions of the families of these parties would in most cases be divergent from one another. Again, in most cases the parties would be cut off from their families. Under these circumstances, any hasty step on the part of the parties to the marriage would be disastrous. Sir, can we say that an young girl of 18, however educated she may be, is of mature judgement? I think, whatever may be the position with regard to physical conditions with regard to other things she cannot be said to have a mature judgement. Then, it is stated that, now let there be the consent of the guardian or parents. I am of opinion that then the question is. even if they give their consent, how can the parents know that both the parties have arrived at their decision after mature judgement? I am afraid. that the consent would not be given and even if in rare cases the consent is given, it would not be real consent. What would happen is, when a girl of 18 wants to marry a young man under the first thrills of love, then perhaps she would threaten that she would commit suicide if the consent

is not given to marry that particular young man. A loving mother or a loving father would sometimes come under the threat of suicide and would give his or her consent to the marriage. But, what guarantee is there that after that the marriage would be a happy one?

Then, Sir, it was stated by my hon. friend Dr. Rama Rao that, if you do not allow girls to marry at an early age, at least at the age of 18, then they would not be getting bridegrooms. My reply to this argument is that, let them love and let them decide to marry, but let them wait up to 21 years. That would be a test of their love. That would decide whether they love each other or not. I have heard and I know of several cases in which the parents of the girl and the boy were educated people and they wanted some test whether there was real love between the parties or not. So, they said, "we have no objection to your marriage, but wait for some years. Then, we would allow your marriage if your love continues up to that time." I have in my mind one or two cases in which though the parties were quite educated, after some time, they found that it was not possible to live together and that they had committed a mistake in marrying each other. Under these circumstances, I am of opinion that irrespective of the consent of the parents or guardian, the age must be 21. I would appeal to my hon. friends the lady Members and say that they would be committing the greatest mistake if, in their enthusiasm, they want to bring down the age from 21 to 18.

There is another cogent reason why the age should be 21 and not 18. We are all alarmed at the rising rate of the population in our country, especially after the forecast of the Census Commissioner that by 1982, we would be 52 crores. I do not understand how these people who advocate contraceptives for bringing down a rise in the population, should now want the marriageable age of the parties to be less than 21 years. *Census of India* paper No. 5 entitled *Maternity Data* says that the child-birth index of mothers who commence child-bearing during the ages 20 to 40 is about 12 per cent. less than the child-birth index of mothers who commence child-bearing during the ages 15 to 19. It, therefore, comes to the conclusion that if the first maternity of mothers is postponed, there will be a definie reduction in the birth-rate. In a recent publication of the United Nations, entitled *Determinants and Consequences of Population Trends*, India is considered one of the high fertility areas of the world and early marriages are considered as one of the causes of this high fertility. From this point of view also, it is absolutely necessary that the age of the parties must, in no circumstances, be less than 21.

I welcome two important changes made by the Select Committee and approved by the Council of States also. These changes are regarding prohibiting a man from marrying his sister's daughter, and prohibiting marriages between children of brother and sister. Such marriages are not only not desirable from the point of view of eugenics, but also from the point of view of family relationship. I do not know about certain sections of our people, but in most of the communities, in most parts of the country, we consider sister's daughters as our daughters. In the same way, uncle's daughter is considered as our sister. These children are playing together and they call themselves only as brother and sister. I cannot understand how people who in their early ages call each other as sister and brother or father and daughter could be married after a particular period? That is repugnant. From this point of view also I heartily welcome these two changes. But then, I am sorry to state that the effect of the changes with regard to prohibited relationship has been nullified by sub-clause (e) of clause 15 in which the customs of the parties have been allowed. This means that in one place you make legal what you make at another place illegal. So many hon. Members said that they want to have

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one civil code. If you allow every sort of custom to creep in, where is the sense in having one civil code? Some of the hon. Members in this House seem to think that custom is a sacrosanct thing. Everybody takes it for granted that if there is a custom, it must be allowed. Do they mean to say that even customs which are injurious and objectionable must also be recognised? The very fact that both the Council of States and the Joint Select Committee have prescribed certain limits of prohibited relationship within which a man cannot marry, shows that the principle has been accepted that a sister's daughter cannot be married and that such a marriage would be void. So, it is quite wrong to recognise at one place what you have prohibited as being injurious or objectionable in another place.

In clause 24 (1) (ii) I want to add the word "sexless" after "impotent" which Shrimati Jayashri Raiji termed as "Akanya". I know, in fact, of one case in which a friend of mine was married to a woman. She was outwardly a woman, but after some time it was found that she had practically no sex at all. Under the circumstances, the word "sexless" should be, in my opinion, included.

Then, I come to clause 27 with regard to divorce. There is bound to be difference of opinion with regard to this clause. There is one small point I would like to mention in regard to sub-clause (b) of this clause. Desertion has been made a ground for divorce here. It reads:

> "has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition; or"

I have given an amendment to the effect that when a man has renounced this world and becomes a *sanyasi* or *sadhu*—in the Jain and other communities both men and women become *sadhus*—and deserts his wife, he can say "I have deserted her for a good cause; I have given up the world." It is a very good cause to give up the world. Therefore, my suggestion is that the wife or the husband of the one who has deserted and become a recluse should also, over a period, be allowed to have divorce. We know in *Parasara Smriti* it has been made one of the grounds of divorce.

Then I entirely agree with my friend Mr. Tek Chand that sub-clause (c) of clause 27 serves no purpose. I do not know how that has been made a ground of divorce. He gave one instance. I give another example. Suppose a man sees that somebody is in a compromising position not with his wife but with his sister or with some dear relative of his, he may commit murder immediately. It may come under sudden provocation. Yet under section 304 of the Indian Penal Code he is liable to punishment of ten years. It cannot even be said of such a person that there was any moral turpitude on his part and yet that is made a ground for divorce. In my opinion, this sub-clause (c) is quite unnecessary, and sometimes, it becomes very injurious and objectionable also. Sometimes, in self-defence, the man commits some murder, but even in that case, if he exceeds that right he is liable to punishment for the offence of culpable homicide not amounting to murder. So, I would suggest that clause 27 (c) be deleted.

1 P.M.

Lastly, I come to sub-clause (k) of clause 27, where divorce is provided for on mutual consent. I would personally prefer that the grounds of divorce must be as few as possible. For my part, I would like to confine them to the grounds which are enumerated in the *Parasara Smriti* which says:

नष्टे मृते प्रव्रजिते क्लीबे च पतिते पतौ ।
पंचास्ववस्थासु नारीणां पतिरन्यों विधीयते ॥

Shri Velayudhan: Is it still in vogue now?

Shri Dabhi: In certain cases, it may be even cruel to compel the two parties to live together and not to allow any divorce. So, in such cases, it becomes absolutely necessary to provide for divorce by mutual consent. I would not quite object to this provision, but I want to make one or two suggestions in this connection. The clause as it stands provides that it is enough if one of the parties makes an application for divorce. My suggestion is that if any application is to be made, both the parties must join together.

The second thing that I would like to suggest is this. Eeveryone has conceded that only in exceptional cases, there should be divorce. But I would suggest that on only one ground alone the divorce should be allowed. Whatever may be the differences between the two parties, only the judge who tried the case, after hearing and going through all the evidence, should decide whether divorce is necessary or not: if, after hearing all the evidence and the parties, he definitely comes to the conclusion that there is so much incompatibility of nature between the two parties that it is impossible for them to live together in happiness, only then he should grant divorce.

Lastly......

Mr. Chairman: This is the third 'lastly' I am hearing. The hon. Member must conclude now.

Shri Dabhi: I shall conclude with just one more point.

Mr. Chairman: I want to call one more hon. Member today.

Shri Dabhi: One more point, and I shall finish.

A new clause should be added to the effect that no divorce should be allowed after twenty years of marriage. In the Bombay Act, providing for divorce, we have a provision to this effect that under no circumstances will divorce be granted after twenty years of married life. Can anybody imagine that a man and a woman who have lived together happily for twenty years could ask for divorce? If they want, that means that there is no other occupation for them, except that between a man and a woman for a certain purpose. Therefore, I would say that if you allow divorce, you should allow it under the restriction that after a period of twenty or fifteen years, or whatever it might be, of marriage, under no circumstances should divorce be allowed.

Mr. Chairman: Mr. R. K. Chaudhuri.

श्री पी० एल० बारुपाल (गंगानगर, झुंझनू रक्षित अनसूचित जातियां) : सभापति महोदय, मझे पूरे सेशन में बोलने का एक बार भी मौका नहीं मिला है। अगर किसी आदमी को पूरे सेशन में अपने विचार प्रगट करने का मौका न मिले तो उसके यहां आने से क्या लाभ है। अगर आज भी हमको मौका नहीं दिया जायेगा तो कब दिया जायेगा।

Mr. Chairman: Even this morning the hon. Deputy-Speaker asked all the Members present to give their names if they had not spoken. Very probably the hon. Member was not here.

Shri Velayudhan: He was there.

Mr. Chairman: The Deputy-Speaker wanted to exhaust the list of such Members.

श्री पी० एल० बारुपाल : मैंने भी अपना नाम दो दफ़े दिया था साहब।

Mr. Chairman: Then he will get a chance.

Shri R. K. Chaudhuri (Gauhati): I am sure that the House would feel indebted to the hon. the Law Minister for the lucid way in which he put the case for this particular Bill. It reminds me of an address to the jury by eminent judges in which they state the case fairly but do not give their own opinion about the facts. That seems to be the attitude which has

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been taken up by the hon. the Law Minister. It must have struck the House already that he was speaking not of his own but he was speaking as a spokesman of the Government.

Shri Velayudhan: Certainly; he is always like that.

Shri R. K. Chaudhuri: All the same, I give this credit to the hon. the Law Minister that by bringing forth these two Bills—the **Special Marriage Bill** and the Hindu Marriage and Divorce Bill—he has practically proved to be a harbinger of spring.

Shri Velayudhan: Very good; congratulations.

Shri R. K. Chaudhuri: I say this because it has opened up the vista of more marriages. He has divided the country into three classes—unmarried, widower or widow and divorcee. (*Interruptions.*) This is in the Bill. These are the three classes of people being catered to by him. This Bill, I am sure, will not only exhilarate the youths of this country but also will be a ray of hope to elderly men. It is somewhat difficult under the existing law of marriages for elderly persons to get a suitable bride.

An Hon. Member: Young bride.

Shri R. K. Chaudhuri: Suitable young bride. But this Bill will produce a large number of divorcees, young women, to whom attention may very profitably be given by the elderly class of people.

Mr. Chairman: I would request the hon. Member not to speak in a manner like this. The hon. Member should speak in a more responsible manner.

Shri R. K. Chaudhuri: I am speaking coolly without being excited.

Mr. Chairman: I only requested the hon. Member to speak in a more responsible manner. If he does not do it, it is his own choice. But if he speaks anything objectionable, I will certainly take exception to it. So I would only request him to speak in a more responsible manner.

Shri R. K. Chaudhuri: I do not think I said anything objectionable to which exception could be taken.

Mr. Chairman: If it was very objectionable, I would have ordered it to be expunged from the records. All the same, he was speaking in my opinion in a light manner. The whole thing was not said in a very responsible fashion.

Shri R. K. Chaudhuri: I seem to have been misunderstood. For instance, I think it will surprise the Law Minister himself and also my hon. colleague, Shrimati Renu Chakravartty that I give my wholehearted support to this Bill. Not only wholehearted support, but I would suggest an amplification of certain provisions of this Bill so that it may satisfy all classes of people in this country. My hon. friend, Shrimati Renu Chakravartty, quite unprovokedly said certain things which she should not have said about me. I did not utter a single word. I did not say 'woman' but she got excited and said "I got excited when the word 'woman' is used." That is exactly the word she used.

Shri Nambiar: 'Woman' or 'she.'

Shri R. K. Chaudhuri: That is what she said. I would remind the House that excitement is contagious and when young women in this House become excited, in their speech, then it means danger to me.

I said that I wholeheartedly support this Bill. I want amplification of certain clauses. I want this to be distinctly stated in the schedule of this Bill that marriages of sister's daughter or mother's sister's son or mother's sister's daughter should be allowed so that the benefits of this Bill can be taken advantage of by all classes of Hindus in India. For instance, marriage with a niece is allowed and is sanctioned: no harm has been done to the country by such a marriage. Marriage among cousins—mother's

sister's son, mother's brother's son or mother's brother's daughter, has been going on without any detriment to society. If these two classes of marriage are allowed in this Bill, then, all those persons who would like to have the benefits of this Bill—the entire Hindu community—will be able to take advantage of this Bill. I very strongly urge that this should be allowed so that the entire aggressive or progressive people—my hon. friend the Law Minister calls them 'aggressive'—......

Shri Biswas: I did not call them 'aggressive.'

Shri R. K. Chaudhuri:.... may take advantage of this Bill. Let not any one of this progressive class take any heed of the provisions of the Hindu Marriage and Divorce Bill. That is what I want. Let that be, even if it is passed, a dead letter, so that everybody who wants economy and convenience in marriage may take advantage of the benefits of this Bill. I appeal to the hon. Law Minister—he will kindly listen to me— that let him satisfy as much as possible the progressive Hindus of this country. But let him let alone those orthodox people who still believe that they would arrange or they should arrange a marriage of their daughters.

Shri Biswas: They are left alone.

Shri R. K. Chaudhuri: Let the bride and bridegroom be selected by their parents, and let them not be bothered. Let not the divorce hang over them as a sword of Damocles. However unpleasent may be the relationship between the Hindu husband and wife today, they get time to make up their differences and live together, although there may be lapses on the part of the wife or the husband. After all the quarrel between the husband and the wife, that is *dampati kalaha*, should not be given so much prominence and should be resolved between themselves and should not go into the legislation, as the hon. Minister wants in the other legislation. Sir. I am not concerned with the other legislation now. I am not going into those provisions now

Mr. Chairman: The hon. Member may continue his speech tomorrow. Now, the Secretary will read a message from the Council of States.

MESSAGES FROM THE COUNCIL OF STATES

Secretary: Sir, I have to report the following three massages received from the Secretary of the Council of States:—

(i) 'I am directed to inform the Lok Sabha that the Council of States, at its sitting held on Wednesday, the 19th May, 1954, passed the enclosed motion concurring in the recommendation of the Lok Sabha that the Council do join in the Joint Committee of the Houses on the Bill to provide for the payment of compensation and rehabilitation grants to displaced persons and for matters connected therewith. The names of the members nominated by the Council to serve on the said Joint Committee are set out in the motion.

Motion

"That this Council concurs in the recommendation of the Lok Sabha that the Council do join in the Joint Committee of the Houses on the Bill to provide for the payment of compensation and rehabilitation grants to displaced persons and for matters connected therewith and resolves that the following members of the Council of States be nominated to serve on the said Joint Committee:—

1. Shri H. P. Saksena,
2. Moulana Mohammad Faruqi,
3. Dr. Raghubir Singh,
4. Shri Jagannath Kaushal,
5. Shri Thanhlira,
6. Dr. Anup Singh,
7. Shrimati Mona Hensman,
8. Shri I. B. Beed,
9. Shri C. L. Verma,

[Secretary]

10. Shri D. Narayan,
11. Syed Mazhar Imam,
12. Shri H. C. Dasappa,
13. Shri N. R. Malkani,
14. Shri Theodore Bodra,
15. Shri Pydah Venkata Narayana,
16. Shri Joginder Singh Mann,
17. Shri Abdur Rezzak Khan."

The above motion was passed by the Council of States at its sitting held on Wednesday, the 19th May, 1954.'

(ii) 'I am directed to inform the Lok Sabha that the Council of States, at its sitting held on Thursday, the 13th May, 1954, adopted the following motion concurring in the recommendation of the House of the People that the Council of States do agree to nominate seven members from the Council to the Public Accounts Committee for the year 1954-55:—

"That this Council concurs in the recommendation of the House of the People that the Council of States do agree to nominate seven members from the Council to associate with the Public Accounts Committee of the House for the year 1954-55 and do proceed to elect, in such manner as the Chairman may direct, seven members from among themselves to serve on the said Committee."

2. I am further to inform the Lok Sabha that at the sitting of the Council held on Tuesday, the 18th May, 1954, the Chairman declared the following Members of the Council to be duly elected to the said Committee:—

1. Shrimati Violet Alva,
2. Diwan Chaman Lall,
3. Shri K. S. Hegde,
4. Shri P. S. Rajagopal Naidu,
5. Shri Ram Prasad Tamta,
6. Shri Mohamed Valiulla.
7. Shri J. V. K. Vallabharao.'

(iii) 'In accordance with the provisions of rule 125 of the Rules of Procedure and Conduct of Business in the Council of States, I am directed to inform the Lok Sabha that the Council of States at its sitting held on the 19th May, 1954, agreed without any amendment to the Salaries and Allowances of Members of Parliament Bill, 1954, which was passed by the Lok Sabha at its sitting held on the 14th May, 1954.'

The Lok Sabha then adjourned till a Quarter Past Eight of the Clock on Friday, the 21st May, 1954